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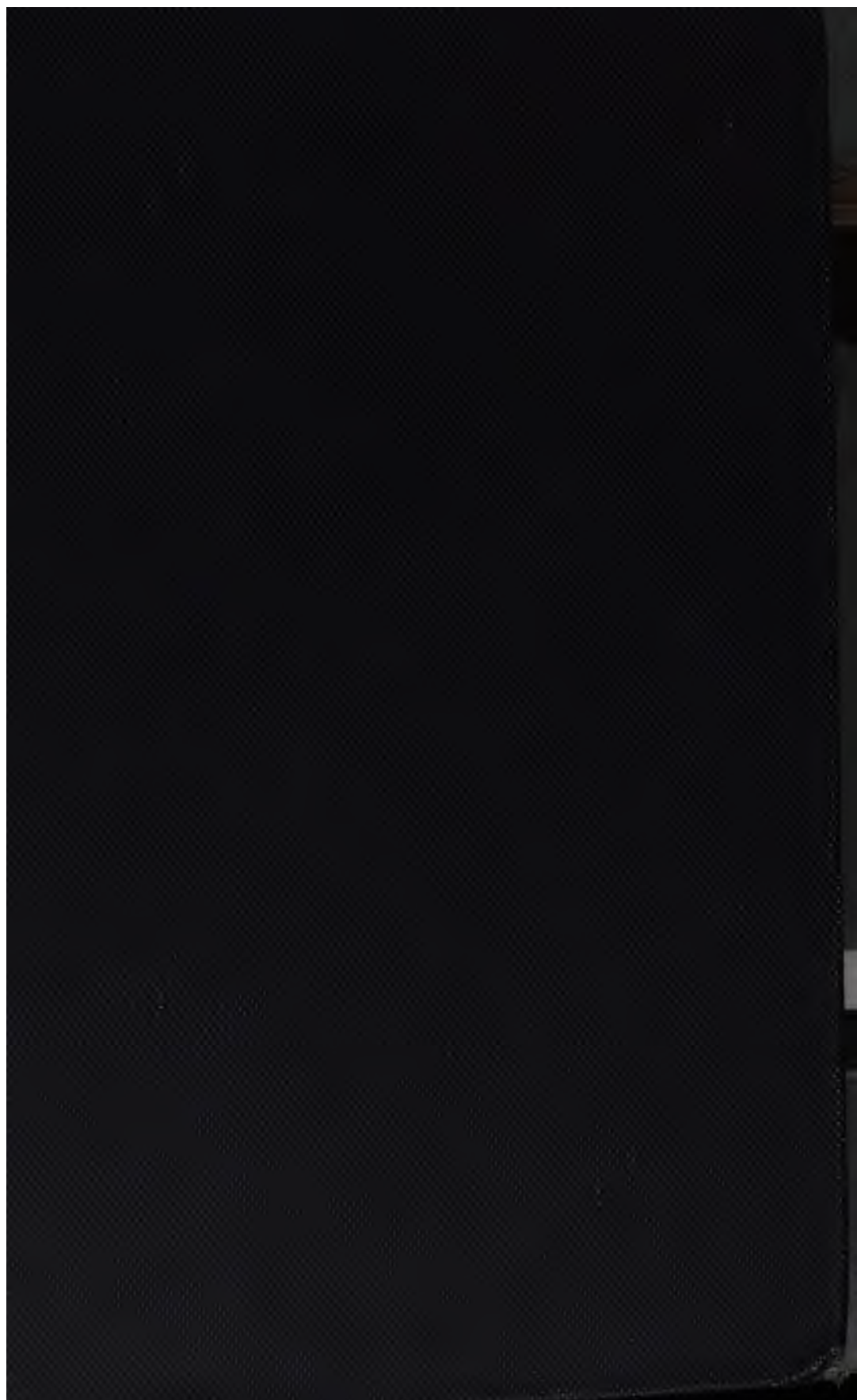
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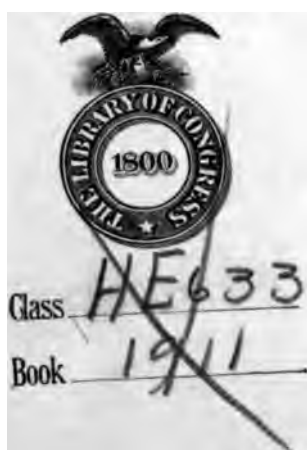
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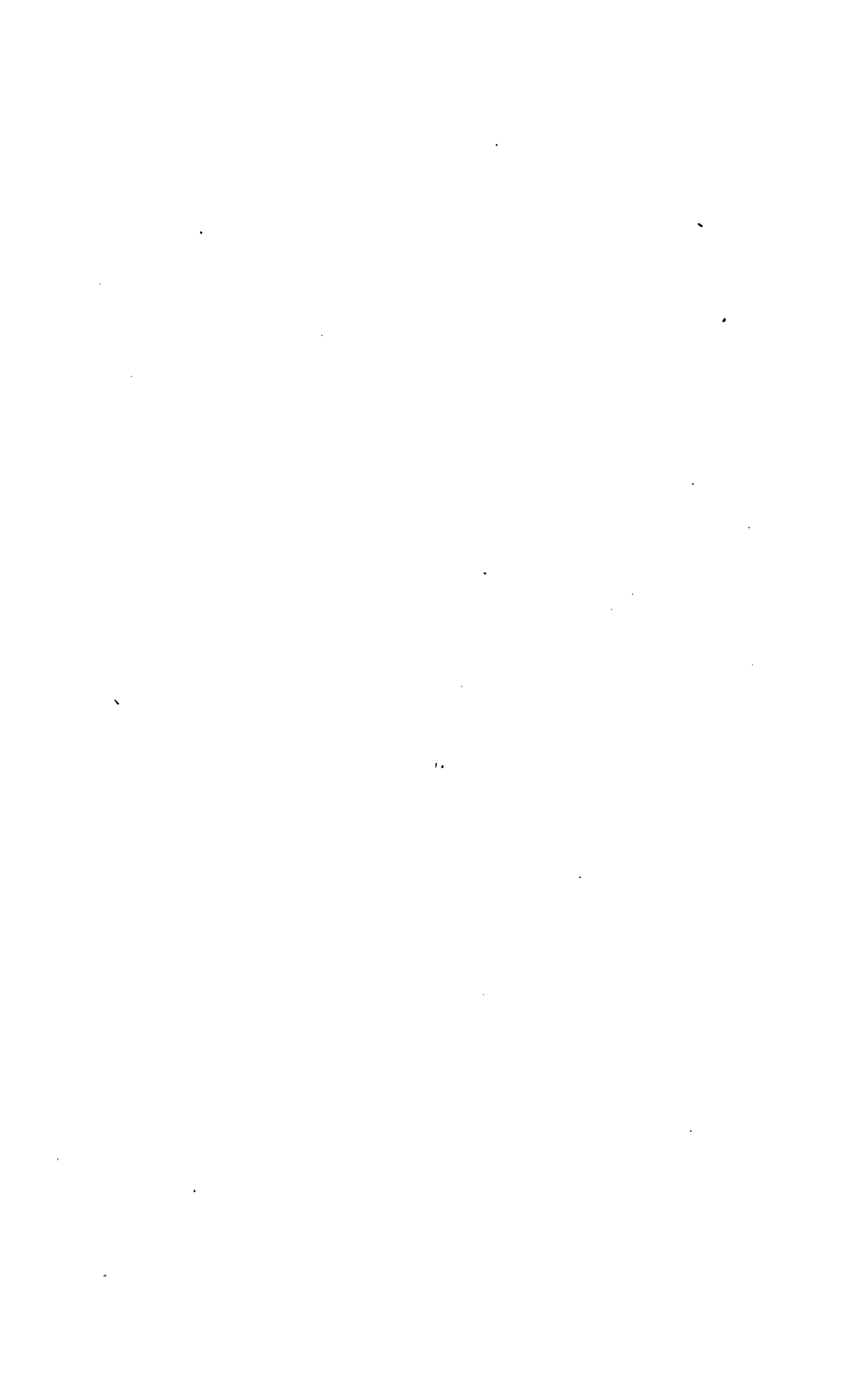
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No. 9

CHARGES OF

THE LEWIS PUBLISHING COMPANY

AGAINST THE

ADMINISTRATION OF THE POST OFFICE
DEPARTMENT

BEFORE THE

U. S. Congress. House.

COMMITTEE ON EXPENDITURES IN THE
POST OFFICE DEPARTMENT

HOUSE OF REPRESENTATIVES

ON

HOUSE RESOLUTION NO. 109

TO INVESTIGATE THE POST OFFICE
DEPARTMENT

JUNE 26 AND 27, 1911



WASHINGTON
GOVERNMENT PRINTING OFFICE
1911

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1911

**COMMITTEE ON EXPENDITURES IN THE POST OFFICE
DEPARTMENT.**

HOUSE OF REPRESENTATIVES.

[Committee room, room 293, House Office Building. Telephone 589. Meets on call.]

WILLIAM A. ASHBROOK, Ohio, *Chairman*.

JOSHUA W. ALEXANDER, Missouri.

RICHARD W. AUSTIN, Tennessee.

WILLIAM C. REDFIELD, New York.

C. BASCOM SLEMP, Virginia.

WALTER I. McCOY, New Jersey.

HORACE M. TOWNER, Iowa.

ERNEST CORNELL, *Clerk*.

II

H. OF D.



20.0.10/9/11

EXPENDITURES IN THE POST OFFICE DEPARTMENT.

CHARGES OF THE LEWIS PUBLISHING CO.

UNIVERSITY CITY,
St. Louis, Mo., June 8, 1911.

HON. WILLIAM A. ASHBROOK,
*Chairman Committee on Expenditures
in the Post Office Department,
House of Representatives, Washington, D. C.*

MY DEAR SIR: Receipt of your letter of May 27, addressed to E. G. Lewis, president of the Lewis Publishing Co., has been acknowledged. This letter is to make a full response to yours of that date.

I have been appointed to represent the Lewis Publishing Co. before your committee in this investigation. Proper credentials will, in due course, be filed for the purposes of the record of your committee.

The resolution of your committee and embodied in your letter calls for—

any complaints against the administration of the Post Office Department with regard to the business relations of the company with the department.

Below you will find the company's specific declarations of complaint. Please note that items Nos. 11 and 12 appear to be against the administration of the Department of Justice. However, the acts complained of in those items were at the instance of the Post Office Department, as will be shown, and it is assumed to be proper, therefore, to include them in this statement of particulars. Preparatory to stating the items of complaint, the following is given for the information of your committee:

The Lewis Publishing Co. is a corporation, duly organized as a printing and publishing company under the laws of South Dakota. It is duly licensed to do business in the State of Missouri. From the beginning, when the matters herein complained of took place, its printing plant and publishing plant were located in University City (Winner Station, St. Louis post office), St. Louis County, Mo. The company began operations in that place in the year 1904.

The Lewis Publishing Co. was in 1905 publisher of the Woman's Magazine and Woman's Farm Journal, both monthly periodicals. Both publications were of large circulation and in great demand throughout the United States. The circulation of the former was approximately 1,500,000 and of the latter 600,000.

The Lewis Publishing Co. bore a good reputation with the public generally. Its two magazines were clean and wholesome and edited with care, both in the reading matter and the advertisements. The company carefully censored and investigated the good faith of every advertisement offered for insertion in the columns of its magazines, and guaranteed every subscriber against fraud or loss through patronage of any advertiser therein.

The revenues of the Lewis Publishing Co. from the subscription and advertising patronage of its two periodicals were approximately \$850,000 per annum. The Woman's Magazine was regarded as a leading mail-order advertising medium. The

Rowell Advertising Agency of New York, in naming the six best mail-order publications in the country at that time, placed the Woman's Magazine third in the following list:

Everybody's Magazine.
Ladies' Home Journal.
Woman's Magazine.
Saturday Evening Post.
McClure's Magazine.
Collier's Weekly.

These conditions could be attained only by and were attained by combining in the Lewis Publishing Co. skill and diligent attention to the public needs and demands, the faithful performance of its quasi-public duty as a publisher, economies possible only in a business conducted on a large scale, and enormous capital invested in good faith in an honorable enterprise, fostered and encouraged by the laws of the United States.

Both the Woman's Magazine and Woman's Farm Journal complied with the laws of the United States for mailable matter of the second class, and were in the year 1905 and for a long time previous admitted to the United States mails as matter of the second class, and at the postage rates fixed by law for publishers of matter of that class, at the St. Louis post office.

The business of the Lewis Publishing Co. was and is substantially of the same nature as that of other publishers, of which there are estimated to be between 10,000 and 15,000 in this country. Its use of the mails was and is under the same laws and regulations as apply to other publishers. By reason of the matters hereinafter stated, the business of this company has been destroyed. Its publishing plant is now dismantled and its presses idle; its losses amount to millions.

The company complains that this destruction of its business was designed and was accomplished by means of a conspiracy among certain officials of the postal service and others to misuse their authority and powers to bring about that result, and that it was the artful cooperation of those in the conspiracy which gave plausibly the appearance of duty to some of the official acts and conduct, when in reality those acts and that conduct were wrongful. The wrongful things done were accomplished in part by disregard of the orderly course of administration and management of the department and the postal service; in part, by violations of the postal regulations; in part, by violation of law; in part, by crafty devices of construction to give unlawful acts the appearance of lawful ones; in part, by the misrepresentation of laws and the use of manufactured or false evidence; and in part by other abuses. By these means and other insidious processes the company's business has been destroyed.

It is roughly estimated that from its inception to date at least a quarter of a million, and possibly as much as half a million, of public funds has been consumed in the course of and as the expenses, direct and indirect, of this official campaign against this company's business. This money was required to compensate for the time of persons occupied in the so-called investigations at the publishing plant, which were more or less continuous for a period of two or three years and at which a large number of persons were often engaged—at one time as many as 65 for a period of three and a half months. It was required in expense of the more or less continuous circularization of the hundreds of thousands of patrons of the company in all parts of the country in connection with the so-called "inquiries" from time to time, which were more or less continuous for a period of five years. It was required in the expense of printing, paper, postage, clerical work of selecting and recording of names and addresses from the company's outgoing mail matter for the aforesaid circularization, traveling, compiling,

consumption of time of postmasters, letter carriers, post-office inspectors, and others—for be it understood that the entire postal service was put in operation and kept in operation against the company with substantial continuity from the beginning.

But whether there was or was not a conspiracy to accomplish the ruin of the company's business, as stated, the following acts were done by the officials and the result is as alleged. Of these specific acts the company now complains, under the provisions of the resolution of your committee, quoted in your letter of May 27, 1911:

(1) That the Classification Division of the Post Office Department, Bureau of the Third Assistant Postmaster General, was charged, during the time these matters took place, by established postal regulation, with initiating and conducting all inquiries and all investigations, etc., and with the making of all decisions on matters connected with the classification of mail matter and the collection of the lawful postage thereon; that this division was equipped with "special agents" as distinguished from "post-office inspectors," specially trained for the performance of any field work required in due course of business of that division;

That nevertheless in March, 1905, the post-office inspectors, special representatives of the Postmaster General and acting for him, without consultation with the Classification Division of the Bureau of the Third Assistant Postmaster General whatsoever, instituted, conducted, and reported to the Post Office Department upon a so-called "exhaustive inquiry into the publication methods of the Lewis Publishing Co.," that ostensibly this so-called "exhaustive inquiry into the publication methods" was to determine whether the Woman's Magazine and the Woman's Farm Journal complied with the law of mailable matter of the second class;

That the statutes governing matter of the second class required only that a publication, the thing to be transported and delivered, in order to be entitled to that classification and the rates therefor, should comply with the conditions enumerated in the statute; that "publication methods," whether good or bad, right or wrong, are not matters with which the law concerns itself; that neither the Postmaster General nor any officer of the department, charged with duty of classifying the mail and charging the lawful rates thereon, is required to determine for the purposes of such classification and charging rates on any mail matter whatever, whether "publication methods" are good or bad; that the department never before this case undertook to determine a question of mail classification upon such considerations; and

It is charged and complained of that such an "inquiry" was not required, and would not have been made in due course of the administration of the postal service, or of the administration of any postal law; that it was not authorized by any postal law; that it was without proper cause; that it was without precedent; that it was in open disregard and violation of the orderly manner of transacting the business of the postal establishment; and that it was not in good faith.

(2) That the alleged official report of the post-office inspectors upon this "exhaustive inquiry into the publication methods of the Lewis Publishing Co." was dated May 17, 1905; that it contained criticisms and condemnation of the company's methods and business in general and was made the basis of a recommendation by said inspectors that the Woman's Magazine should, without notice or a hearing, as required by the act of 1901, be summarily denied the mails at second-class rates, and that in the case of the Woman's Farm Journal a hearing should be accorded the company on the right of that publication to continue;

That while this report was pending in the department and before action had been taken thereon the substance thereof was given out, or manipulated so that it would get out, for publication in an unfriendly newspaper of large circulation in St. Louis, namely, the Post-Dispatch; that the May 31, 1905, issue of that paper did contain the substance of the said report and quotations therefrom;

That this publication of the contents of the inspector's report was, notwithstanding such reports are under the rules of the department "confidential," often being denied committees of Congress on the ground of incompatibility with the public interest; that the making of the said "inquiry" because of the public knowledge thereof had already done great damage to the company's commercial credit and standing locally; that the publication in the newspaper of the alleged findings, recommendations, etc., of the inspectors greatly intensified the injury and enlarged the field thereof; and

It is charged and complained that it is fairly and rightfully to be assumed from the circumstances of this whole case, the contents of the report itself, and the publication of the contents thereof in the newspaper that the latter was the real purpose of the said "inquiry," rather than for any action which might under the law and circumstances properly be taken upon what that report contained.

(3) That, although the summary action recommended by the post-office inspectors in the report upon the said "exhaustive inquiry" was not taken by the department, the company was nevertheless cited to appear and did appear at the Post Office Department on June 17, 1905, to answer and show cause why its two publications, the Woman's Magazine and the Woman's Farm Journal, should not be cut off from the second-class rates, without which the company's business would be suppressed.

That the hearing was before the Third Assistant Postmaster General; that officer did decide and did report on July 8, 1905, to the Postmaster General that the two publications were free from wrong; that there was no cause to disturb their status in the mails; that the post-office inspectors' report to the Postmaster General on the so-called "exhaustive inquiry" was without proper cause, irregular, and improper; and

It is charged and complained that this citation and hearing, like the inquiry so-called and the publication in the newspaper were extraordinary; that they were unnecessary; that they would not have occurred in due course of administration; that they were in violation of orderly procedure and practices in the department; that they were uncalled for under any circumstances in due and proper course of the administration of the postal service; and that these matters, because of the public knowledge thereof, and of the reflections upon the company's integrity, greatly damaged its commercial credit, public good will, and prestige.

(4) That, notwithstanding the findings and the report of the Third Assistant Postmaster General upon the hearing of June 17, 1905, these same post-office inspectors, acting on behalf of the Postmaster General and persistent in their purpose, instituted a second inquiry into the business affairs of the company; that this inquiry, like the first, was ostensibly for the purpose of determining whether the Woman's Magazine and the Woman's Farm Journal were entitled to be mailed as matter of the second-class, which right if taken away would destroy the company's business; that this inquiry, like the first, was undertaken and conducted without the knowledge of the Classification Division of the department having jurisdiction of all such matters;

That this second inquiry was conducted also in direct violation of an express agreement of the Postmaster General, dated July 19, 1905, to issue for the information and guidance of all publishers the rules of the department in determining whether a publication complied with the requirements of the statutes in relation to second-class mail matter; that it was also in violation of his agreement to provide that after the publication of said rules and before their taking effect, ample time should be allowed publishers to adjust their publications to the requirements, if when the rules were published, they were not already in conformity therewith;

That this second inquiry was undertaken and conducted at the very time the rules aforesaid were formed but yet unpublished; that the rules were published December 16 the following, and provided that publishers should be allowed until April following to adjust any irregularities in their publications to be in conformity with the rules;

That from 20 to 50 postal officials were engaged in this second inquiry; that during the time they had possession of the company's records and files the company was greatly embarrassed and at much disadvantage in the transaction of its business with its patrons; that when leaving the company's building at night the postal officials sealed up the entrance doors to the offices so that the officers or employees of the company could not have access to its files and records; that when the files and records were restored to the company they were in such a state of disorder that it was two months before the company was able to transact its business with its customary dispatch and attention and with satisfaction to the needs of its patrons; and

It is charged and complained that this investigation or inquiry, begun on October 12, 1905, would not have been instituted in due course of administration; that it was undertaken and conducted in violation of the postal regulations; that it was not required in good faith for any proper purpose; that the expenditure of the public money for services in that connection was unauthorized and unlawful; and that, like the previous "inquiry," was greatly damaging, because of the public knowledge thereof, to the company's public standing and credit.

(5) That the aforesaid post-office inspectors, the St. Louis postmaster, and the Postmaster General, and other public officers cooperating with them, did, in October, 1905, secretly seize and confiscate 300,000 copies (three carloads) of one of the company's magazines, namely, the Woman's Farm Journal; that this seizure took place after the company had deposited the copies in the mails and had paid the lawful postage thereon; that neither the postage paid nor the copies themselves were returned to the company; that the seizure was discovered weeks after; that from the distress of this seizure, covering half of an entire edition, and the company being in ignorance of the names and addresses on the copies seized, there could be no relief in starting the presses again and printing an additional 300,000 copies to send in their places;

that this seizure forced the company into the position of defaulting upon a great number of its subscription contracts and advertising contracts; and that these circumstances greatly added to the damage already done the company's business; and

It is charged and complained that this secret seizure was in direct violation of law; that it was in violation of the postal regulations; that it was unwarranted by any circumstance; that it would not have occurred in due course of orderly administration; that it was not in good faith for any lawful or proper purpose; that the statute made such a seizure a penal offense; and that the company was helpless to prosecute the offenders because the administration thereof was in the hands of the guilty parties themselves.

(6) That between March, 1905, and the date of this statement the Postmaster General, his assistants, and the officials under them have on numerous occasions prevented the company in one way or another from exercising its lawful privilege to mail copies of its several publications at publishers' second-class rates; that those officials have assessed against many hundreds of thousands of the company's publications unauthorized and prohibitive nonpublishers' rates; that by this process many thousands of dollars have been wrongfully extorted from the company as alleged postage; that in so far as those rates were prohibitive and the company was unable to pay them the effect of the assessment thereof was to force the company to default upon its subscription and advertising contracts; and

It is charged and complained that all such assessments of other than publishers' rates on copies sent by the publisher and from the office of publication was unwarranted; that it was in violation of law; that it was not done in good faith and in due and orderly course of proper administration; and that it occasioned great material damage to the company and great injury to its public faith and credit.

(7) That in December, 1905, the post-office inspectors and the postmaster at St. Louis secretly seized and detained in the St. Louis post office thousands of the company's outgoing sealed letters upon which the lawful postage was prepaid; that this action resulted in great injury to the company's business, its public faith, credit, and prestige with advertisers, subscribers, and correspondents; and

It is charged and complained that this holdup of the first-class letter mail was in violation of law; that it was in violation of the postal regulations; that it could be for no other purpose than to examine into the contents of the letters, which is believed was done, and which was unlawful.

(8) That beginning in the year 1905, and continuing to date, there have been frequently sent out from the Post Office Department, the post office at St. Louis, from many other post offices throughout the country, and from post-office inspectors at St. Louis and elsewhere, a great number of alleged official communications and inquiries, so called, to all or a great part of the subscribers, advertisers, and patrons of the company; that some of these communications called for one kind of information and some for another; that some were to ascertain if the business transactions of the persons addressed with the company were satisfactory; that some asked for signed statements from the persons addressed concerning their dealings with the company; that some asked for the sending in of the communications and papers received from the company;

That many orders were sent out to postmasters, directing them to instruct their letter carriers to make a series of verbal inquiries concerning the private business of the persons addressed at the time of making delivery of the company's mail matter to them; that the letter carriers were instructed by their postmasters to record the answers and send them in;

That all these things were done as if necessary or required in the administration of the mail classification laws and regulations in respect to the Women's Magazine and the Woman's Farm Journal; that while the company can not state the exact number of the different forms of communications sent out, or the different kinds of information called for, or the different papers called for, or the different statements called for, the company has seen some 70 different forms which, more or less, meet the descriptions given;

That for the most part these communications and inquiries seemed to carry in them a threat, and in some cases did threaten the parties inquired of with some sort of trouble or chastisement by the officials; that the inference to be drawn from all of them, or the most of them, was that officially it was regarded as an improper or reprehensible thing to patronize the company at all; and

It is charged and complained that the making of such inquiries of the company's patrons concerning their business transactions was unnecessary and uncalled for in the orderly and proper administration of the mail-classification laws; that such inquiries were unauthorized by any law; that they were made for the ulterior purpose of intimidation and to create distrust, doubt, and question of the integrity and good faith of the company in its dealings with the public; that it was one of the insidious

processes employed by the officials to undermine and destroy the company's business, which depended upon public good will and credit; and that all public money spent in this connection for services of the officials for paper, for printing, for postage, for traveling, and otherwise was unwarranted by any law.

(9) That on March 4, 1907, without notice whatever, and without a hearing as required by law, all copies of the company's *Womans' Magazine* and *Woman's Farm Journal* were summarily denied the mails at publishers' second-class rates, and the third-class rate was assessed against them; that this action closed down the presses and stopped the publishing business completely; that this action, with what had gone before, completed the wrecking of the company's business, public faith, and credit, since it forced it to default on officially admitted over 800,000 subscription contracts, and on all of its advertising contracts; that this act discredited the company and its publications for all future time; that notwithstanding the publications were restored to their place in the mails and at publishers' rates about nine months after this complete close-down, and the company made great effort to revive them and restore its business prestige and spent enormous amounts of money in that undertaking, it was nevertheless obliged, because of the effect of all that has been recited to abandon the work of rehabilitation and did so on October 10, 1910, finding restoration of public confidence beyond the possible, the Government blight having reached to the remotest corners of the land; and

It is charged and complained that this act was immoral and lawless; that it was unwarranted by any circumstances whatsoever; that in some part it was the Postmaster General's personal penalty inflicted upon the company for having offended him by publishing severe criticisms of his previous official acts; that it was a wanton disregard of property rights; that it violated the constitutional guaranty of the liberty of the press; that with what had gone before it completed the wrecking and the closing up of the company's business and injured and damaged an honorable, law-abiding enterprise greatly in excess of a million dollars.

(10) That on March 19, 1907, 15 days after, the official act had destroyed and rendered idle the company's plant and stopped its business, there was issued from the Post Office Department a printed pamphlet, ostensibly conveying to the public and to the press of the country a statement of the alleged reasons and justification of the high-handed act of March 4, 1907; that this pamphlet was sent in large quantities to the company's patrons, as well as to the press and the public in general; and

It is charged and complained that if the official conduct of March 4, 1907 was lawful and proper, it needed no such explanation to justify it; that this pamphlet contained untrue and libelous statements concerning the company; that it greatly enlarged and intensified the damage already done to the company's business; that this pamphlet was printed and circulated in direct violation of law; that the expenditure of public money for paper, printing, circulation, etc., was unauthorized by law.

(11) That the president, secretary, and treasurer of the Lewis Publishing Co. were, in alleged true bills returned by the United States grand jury December 1, 1905 (No. 5222), May 4, 1906 (No. 5257), and July 6, 1907 (No. 5316), indicted for alleged conspiracy to defraud the Government of postage on copies of the *Woman's Magazine* and *Woman's Farm Journal*; that those indictments alleged the form of the statute limited the number of subscribers' and other copies the company might send in the mails at publishers' rates of a cent a pound; that the limit had been exceeded; and that the form of the statute required on the excess the rate of 1 cent for each 4 ounces or fraction thereof, prepaid by stamps affixed; and that this rate was not as required by the form of the statute, prepaid on the excess, but that the excess was mailed fraudulently at the publishers' rate of a cent a pound; and

It is charged and complained that all three of these indictments were fraudulent; that neither the law nor any postal regulation limited the number of copies which the company might mail at the publishers' rate of a cent a pound; that neither the law nor the postal regulation required the payment of the nonpublishers' rate of 1 cent for each 4 ounces or fraction thereof upon any copies whatsoever sent by the publisher from the office of publication; that the indictments were fraudulent for the further reason that there was actually no excess of copies mailed over the alleged limits at the cent-a-pound rate, even if such limits were, as a matter of truth, in the form of the statute; that the alleged evidence of the excess mailings was manufactured and false; that these indictments were without probable cause and not in good faith, but for the ulterior purpose of intimidation; that it was the purpose by means of them to railroad the officers of the company into the penitentiary on executive-made law and false evidence; that the publication of said indictments in the newspapers and in official documents, issued from the department at Washington, stigmatizing the officers of the company as charged with fraud against the Government, greatly added to the damage and injury already done to the company's public faith and credit.

(12) That in July and in November, 1907, three civil suits (Nos. 5474, 5515, and 5516) were instituted in the name of the United States to collect alleged back postage from the company on copies of its Woman's Magazine and Woman's Farm Journal at the nonpublishers' rate of 1 cent for each 4 ounces or fraction thereof, it being alleged that the mailing of said copies at the publishers' rate of a cent a pound was unlawful, etc.; and

It is charged and complained that these civil suits were spurious and, like the indictments, misrepresented the form of the statute; that they were without probable cause; that on their face they were absurd and never intended to be tried; that they were not in good faith, but for the ulterior purpose of intimidation and overwhelming the company in its distress, and to emphasize and intensify in the public mind the false impression that the company was lawless and conducting an illegitimate business; and that all public money spent for services of preparation, filing, and otherwise in this connection was unauthorized by law.

(13) That on April 20, 1907, sixteen days after the closing of the mails altogether to the company's magazines and creating thereby substantial grounds for complaint and dissatisfaction among its hundreds of thousands of subscribers, patrons, advertisers, and others, because of the forced defaults on the part of the company, there was sent from the post-office at St. Louis by post-office inspectors an alleged official inquiry, addressed to all or a great part of the subscribers, readers, advertisers, and patrons of the company, a communication naively asking whether their transactions with the company were satisfactory; that those communications artfully invited complaint of dissatisfaction and furnished a free penalty envelope for the return thereof to the inspectors; and

It is charged and complained that the sending out of such communications was not required in the orderly administration of the mail-classification laws; that it was not done in good faith; that it was for the ulterior purpose of furthering the objects and purposes of the whole official campaign of ruin herein complained of, and for the purpose of emphasizing and intensifying the public impression, assiduously cultivated for years, that the company was conducting a lawless business; and that all public funds spent for printing, paper, and otherwise in this connection was unauthorized by any law.

(14) That since the establishment of the Woman's National Daily, in November, 1906, the company's business in connection with that paper has been subjected to substantially the same sort of treatment as that in the case of its magazines; that it has been harassed and annoyed by continuous investigations during which it was deprived of the use of its records for considerable periods of time to the hindrance of its business, and which when returned to the company were in such a topsy-turvy state that its whole business was thrown into confusion for months of time, which it required to restore them to such order that business could be transacted properly; that there has been similar frequent official circularization of the subscribers, readers, and patrons of the Woman's National Daily, now National Weekly, as in the case of the magazines; that these inquiries were of an intimidating, threatening, and annoying character to the patrons of the company; and that unlawful and prohibitive non-publishers' rates have been assessed against hundreds of thousands of outgoing copies, which it was the right of the company to mail at publishers' rates; and

It is charged and complained generally in connection with the company's entire publishing business that for the most part of five or six years it has been subjected to a substantially continuous course of alleged official investigations, which were not in good faith, which were not required or necessary in the proper administration of the mail classification laws; that for a great part of the time its offices and plant have been practically in the possession of postal officials, ransacking its books, papers, and records and throwing them into confusion, to the embarrassment and distress of the company in transacting its business; that its subscribers, patrons, and advertisers everywhere have been harassed, annoyed, and irritated by a substantially continuous course of alleged official inquiries, which were not required or necessary to the proper administration of the classification laws, but which in reality have undermined the company's business; that by the processes enumerated and otherwise the company has been forced into the position of defaulting upon its subscription contracts, advertising contracts, and otherwise; that by the processes enumerated and others, which will be shown during the course of investigation, the company's business has been wantonly ruined, the one remaining remnant is the Woman's National Weekly; that the company has suffered the loss of millions; that no publishing company in the United States ever before or since has been subjected to such a course of despotic, lawless, and malicious treatment at the hands of public officials of the Post Office Department or any other department of the Government; that the

same was accomplished by disregarding the orderly course of procedure in the administration of the mail classification laws and by the taking of this one publishing company's case alone out of the experienced hands in which all other cases of the entire country were placed and by the putting of this one case into the hands of inexperienced persons conspiring together and with others for the ulterior purpose of ruining the company's business, by direct and indirect methods and by abuses of authority and power, in an alleged administration of the mail classification laws; that the administration of the mail classification laws did not then require, and do not now require or authorize, the doing of any of the things complained of; that all these matters were unauthorized or unlawful or unwarranted and public money spent for services and expenses of every kind and nature in that connection was without warrant of law.

The foregoing charges and complaints are submitted in response to the resolution of your committee, embodied in your letter of May 27, addressed to the president of the company. It is believed that they furnish sufficient basis for a comprehensive investigation of the case of the Lewis Publishing Co., covered by that resolution. The specifications by no means contain all that might be alleged as grounds for complaint. However, it is believed they are ample to show the nature of and the persistency of the official campaign of ruin against which the company was helpless to defend itself.

As the evidence will show, the purpose of the officials was designed to be accomplished expeditiously and decisively at the beginning in 1905; that the plan failed in that regard; that it was worked out on other lines; and that there has never been from the beginning an intention that the company's business should be permitted to survive, if by the processes employed it could be strangled or suffocated.

The presentation of the case will show that the shadow of the menacing official hand has for years followed into the homes of subscribers, patrons, correspondents, and advertisers every letter and every copy of the publications sent out. At the same time the home offices and plant of the company were overrun by post-office inspectors and their assistants, examining into and criticizing every act, browbeating the company's officers and employees, and adroitly throwing the records and files into confusion.

The company has never been able to get the presidential ear to listen to its complaint. That official evidently relied upon his Postmaster General, the chief actor and chief conspirator in the work of ruin, and without whose approval and cooperation, the matters complained of could not have been done.

For the information of your committee, it is stated that at the very beginning of the official campaign the company advised the department that if its business or any feature of it, or any conduct on its part, violated any law or regulation the same would be promptly corrected; that so far as it knew it violated no law, no regulation, no ruling, and did not intend to do so, and that it was conducting its business exactly on the same lines as other publishers. The department never notified the company that anything done by it was in violation of law or regulation and should be corrected, although it was customary in dealing with publishers, when in some way they infringed the law or rules, to notify them and give them an opportunity for correction. This company has been given little or no chance to defend itself or to make correction of anything which was deemed irregular by the department, whether so in fact or not. The official blow was always struck without warning, without regard to law, without regard to practices, without regard to morals.

At the hearing before your committee evidence will be submitted, either documentary or oral, or both, to substantiate every one of the charges and complaints. But it is anticipated that you will regard it as necessary to thoroughness to send a subcommittee to St. Louis to examine the plant and publishing business on the ground in order to get a proper conception of its character and magnitude and to hear the initial part of the testimony, which can best be submitted here. The submission of further evidence in the case and consideration of the whole matter would, of course, follow in Washington.

It is assumed here that the purpose of your committee in taking this case up is along the line of a general purpose of Congress to make inquiry to ascertain with what fidelity the laws have been administered and whether there have been abuses, and that if the results warrant, your committee would recommend legislation to protect the interests of the Government in the future and to protect citizens, if it be shown that any have been made to suffer wrongfully. It is believed that the development of this case will serve your committee well in the matter of throwing light upon such matters and upon mal-administration and how it operated, and that it will convince you of the great need of some such legislation.

As stated before, I represent the company in this matter and assume that your committee will permit me on behalf of the company to suggest witnesses to be called, and to interrogate all witnesses.

Anticipating that you will in due course advise me when your committee will take this matter up and how and where I am to appear, I am,

Very respectfully,

EDWIN C. MADDEN,
Attorney in fact.

(Address: Edwin C. Madden, Box 145, Winner Station, St. Louis, Mo.)

No. 10

HEARINGS

BEFORE THE

COMMITTEE ON EXPENDITURES IN THE POST OFFICE DEPARTMENT

HOUSE OF REPRESENTATIVES

ON

HOUSE RESOLUTION NO. 109

**TO INVESTIGATE THE POST OFFICE
DEPARTMENT**

JULY 6, 1911



**WASHINGTON
GOVERNMENT PRINTING OFFICE
1911**

COMMITTEE ON EXPENDITURES IN THE POST OFFICE DEPARTMENT.

HOUSE OF REPRESENTATIVES.

¹[Committee room, room 293, House Office Building. Telephone 589. Meets on call.]

WILLIAM A. ASHBROOK, Ohio, *Chairman*.

JOSHUA W. ALEXANDER, Missouri.

RICHARD W. AUSTIN, Tennessee.

WILLIAM C. REDFIELD, New York.

C. BASCOM SLEMP, Virginia.

WALTER I. MCCOY, New Jersey.

HORACE M. TOWNER, Iowa.

ERNEST CORNELL, *Clerk*.

EXPENDITURES IN THE POST OFFICE DEPARTMENT.

COMMITTEE ON EXPENDITURES IN THE
POST OFFICE DEPARTMENT,
HOUSE OF REPRESENTATIVES,
Thursday, July 6, 1911.

The committee met at 10 o'clock a. m., Hon. J. W. Alexander presiding.

Mr. ALEXANDER. I desire to file the following letter:

COMMITTEE ON EXPENDITURES IN THE POST OFFICE DEPARTMENT,
Washington, D. C., June 28, 1911.

HON. J. W. ALEXANDER, M. C.,
Washington, D. C.

DEAR JUDGE: During my absence I authorize you, as ranking member of the Committee on Expenditures in the Post Office Department, to call a meeting of this committee should conditions warrant the same, to preside at the meeting, and to transact all other business for the committee vested in me under the rules of the House.

Very respectfully,

WILLIAM A. ASHBROOK,
Chairman Committee on Expenditures in the Post Office Department.

I also desire to submit the following letter from the Postmaster General, which will be marked "Exhibit No. 1":

EXHIBIT No. 1.

OFFICE OF THE POSTMASTER GENERAL,
Washington, D. C., July 4, 1911.

HON. WILLIAM A. ASHBROOK,
*Chairman Committee on Expenditures
in the Post Office Department, House of Representatives.*

MY DEAR MR. ASHBROOK: Supplementing my letter of yesterday relative to your committee's inquiry respecting certain changes we are making in the carrier service at Brooklyn, it has occurred to me that a brief review of what we are trying to accomplish in this case may be of service to you, and I accordingly submit the following statement:

During the course of certain inquiries into post-office conditions conducted early in the present administration it was shown that the carrier service of Brooklyn had been excessively expensive when compared with similar services in other cities. An investigation to determine the reasons for the extraordinary cost was thereupon ordered. Ten post-office inspectors were assigned to the work, and they began their inquiry on October 20 and completed it December 28, 1910, submitting a report under the latter date.

In proportion to its postal receipts the Brooklyn post office had been expending nearly four times as much for its city delivery service as either New York or Chicago. In fact, it showed a much higher rate of expense than any other large city in the United States.

On investigation it was found that in Brooklyn the average weight of mail delivered daily by each carrier amounted to only 42 pounds as compared with 69 pounds in New York and 75 pounds in Chicago. The average number of pieces of mail handled daily by each carrier in Brooklyn was only 840, while in New York it was

1,372, and in Chicago 1,681. This seemed to indicate that the carrier force was not being properly managed.

Furthermore, the number of deliveries made by letter carriers in the residential districts of Brooklyn was found to be greater than in any other city in the country. In many sections of Brooklyn that are purely residential five deliveries a day were being made, while similar districts in other cities receive as a rule only three deliveries, and frequently only two.

In view of the conditions disclosed the inspectors who made the investigation united in recommending certain reductions in the number of deliveries, particularly in the residential districts, in order to make the service conform to the standard maintained in similar districts in other cities.

The postmaster of Brooklyn, who was summoned to Washington for a conference on the subject, concurred in the findings of the inspectors as to the excessive deliveries. A plan for the gradual readjustment of the carrier service in Brooklyn was accordingly agreed on by the First Assistant Postmaster General and Postmaster Voorhies, with the understanding, however, that no employees were to be dropped from rolls, for the inspectors, as a result of their investigation, had reported that the Brooklyn delivery service could be efficiently conducted under proper management with a much smaller force of carriers, their contention being that the present number was larger than necessary by 175 men.

In order to avoid dropping any men from the rolls the reorganization has been conducted most cautiously and every employee affected had been taken care of either by assignment to some district where the service could be properly extended or by transfer to another city where additional carriers were needed.

An important principle constantly adhered to by the department in this readjustment of the carrier service, is that of distributing the appropriations available for such purposes as equitably as possible among all the cities and towns of the country that are entitled to benefit from them. The investigation made by our inspectors, and for this purpose we selected some of the most competent men in our service, showed that we were annually expending for the carrier service in Brooklyn, as measured by the standard set for other cities, nearly \$200,000 more than was justified. The curtailment of the excessive cost of the Brooklyn service resulting from the gradual readjustment we are putting into effect will make it possible for us to apply the money thus saved to the extension of city delivery in cities and towns where it is greatly needed.

In keeping with this policy mail delivery by carrier was provided for during the fiscal year just closed in 52 additional cities and towns. The city carrier force as a whole was increased during the year by 458 men, requiring an added annual expenditure for the maintenance of this service of approximately \$280,000.

Such changes as those being made at Brooklyn are demanded in the interest of the service as a whole and will unquestionably result in a fairer and more effective expenditure of the city delivery appropriation.

Yours, very truly,

FRANK H. HITCHCOCK.

I suggest, Mr. Redfield, that you take up the case and present it in your own way.

Mr. Redfield then submitted and read the following letters:

EXHIBIT No. 2.—*Letter of W. B. A. Jurgens, wholesale grocer, Flushing Avenue, Brooklyn, N. Y., dated July 5, 1911.*

The cutting down of letter carriers in Brooklyn, making now only three deliveries and formerly five, has seriously affected my business. I send out on an average of between 800 and 1,000 pieces of mail per day, the majority for Brooklyn delivery. My customers receive their bills very late and I am receiving mail in many instances 24 hours after the letters were stamped in the post office. Most of these are orders for perishable goods for quick delivery, and my customers are complaining about the delay of their orders, which has been brought about by the slow delivery of the mail in Brooklyn.

I understand that you are chairman of this committee and that there will be a hearing to-morrow, and I wish to add my protest and would like very much to have the mail service restored to what it formerly was. This is not a village, but a town of some size, and I do not see why the Borough of Brooklyn was cut down when all the other boroughs were left in the same shape.

I thank you for your attention to this matter.

EXHIBIT No. 3.—*Letter of I. S. Remson Manufacturing Co., carriage manufacturers, 740-750 Grand Street, Brooklyn, N. Y., dated June 6, 1911.*

This company desires to go on record as protesting emphatically against the action of the Washington authorities in reducing the mail service in this city from five to three deliveries daily. We think that this is an outrage, and a sad reflection on whoever is responsible for such a radical and rank change.

We receive lots of out-of-town mail, which formerly when missing the first trip in the morning, reached us by 10 o'clock; now it reaches us from three to four hours later. We also used to have a delivery about 5.30 p. m., and now these letters do not get here until the next morning. Taken as a whole, we think the move a rank injustice to the business people of Brooklyn, and we hope that you will do all that you can to see that this service is speedily restored and not disturbed again, unless to give us more than five deliveries, which would be more in keeping with the progress of the times than a reduction of our service on a par with second and third class cities.

In fact, there are certain small towns on Long Island that receive two and three trips daily. Are not we as a city of nearly a million and a half entitled to at least double the service of these hamlets?

The whole city of Brooklyn is up in arms over this thing, and we don't believe our people are going to submit to this injustice if any means can be provided to prevent it.

EXHIBIT No. 4.—*Letter of H. & H. Reiners, distillers and distributors, 175 to 197 Stagg Street, Brooklyn, N. Y., dated June 23, 1911.*

Commencing Monday, the 19th instant, the deliveries of our United States mail through Station A have been reduced from five per day to three per day, and are unable to obtain any explanation as to its cause.

Our business, as you may know, is largely interstate. The out-of-town mails arrive in New York post office during the night, and through delays can not be delivered us in the first morning mail. They are now delivered us in the afternoon, too late for shipment to be made the same day, and will be the cause of our losing trade or custom to a very large extent.

Last year we directly or indirectly paid the United States Internal Revenue (Treasury Department) approximately \$1,000,000 revenue taxes.

Will you enlighten us as to why this apparent discrimination? The Williamsburg section of Brooklyn surely has suffered enough without this.

EXHIBIT No. 5.—*Letter of New York & Brooklyn Brewing Co., Bushwick Avenue and Scholes Street, Brooklyn, N. Y., dated July 1, 1911.*

On June 19 the deliveries of United States mail from Station A were reduced from five to three deliveries per day.

This change is causing a large amount of inconvenience and trouble. We have a large number of out-of-town customers who mail their orders at night. Heretofore these orders were received in the 10 a. m. mail, but now we do not receive them until 1.30 p. m. We therefore can not make our shipments until the following day. You can see what this means for both the customers and ourselves.

We trust that you will do your utmost to revive the old service.

EXHIBIT No. 6.—*Letter of Congress Brewing Co., Meserole, Humboldt, and Scholes Streets, Brooklyn, N. Y., dated July 1, 1911.*

We wish to ask your good offices in an endeavor to have the former method of delivering mail in this locality reestablished. Recently the deliveries were reduced from five to three per day.

This involves considerable hardship on our part, because orders sent us from Long Island do not reach us in time to make shipment the day following the mailing of the order.

We can not understand why a populous business community similar to ours should be put on the same basis with places of less importance.

If you will be good enough to let us know in reply what steps to take to reach the proper authorities in this matter, we would thank you.

EXHIBIT No. 7.—*Letter of Froehlich Bros. Co., wholesale wine and liquor dealers, 214 and 216 Graham Avenue, Brooklyn, N. Y., dated July 1, 1911.*

We wish to ask your intercession with the Post Office Department to have the five deliveries per day renewed. Under the three-delivery system we are suffering great hardship, more especially with our out-of-town trade. We pay directly and indirectly, through the United States Internal Revenue Department, \$100,000 per year in Federal taxes and think we, as well as all the other Brooklyn wholesalers and manufacturers, are entitled to efficient postal service.

EXHIBIT No. 8.—*Letter of Easter Brewing Co., Bushwick Avenue, Meserole and Scholes Streets, Brooklyn, N. Y., dated July 1, 1911.*

We understand that the Post Office Department reduced the number of deliveries to our office from 5 to 3. We receive in the neighborhood of 250 letters a week, and nearly all of these letters contain orders. On account of this reduction, our customers do not receive the goods ordered by them until the following day, and we have had numerous complaints on this account.

Our section is rapidly growing, and instead of reducing the deliveries they should have been increased. We are brewers of lager beer and are paying to the Government in the neighborhood of \$100,000 a year for beer stamps alone, and we think that in view of this fact that the deliveries should be restored to the original number of 5 per day.

Hoping you will look into this, and thanking you for anything that you may be able to do for us, we are,

Very truly, yours,

THE EASTERN BREWING CO.,
C. KUTZ, Manager.

EXHIBIT No. 9.—*Letter of John F. Seekamp, secretary Hatton & Doyle (Inc.), insurance, 192 Montague Street, Brooklyn, N. Y., dated June 30, 1911.*

Permit me to call your attention to my experience with the mail delivery at my residence in this city (132 Moffat Street). I had occasion some time ago to make complaint, because the mail more often reached my home between 9 and 10 a. m. than before 9. I was advised that I should ordinarily receive my mail at 8.45, but even this I do not regard as good service in the city. However, instead of improvement there has been the contrary, and my mail is now received as late as a quarter of 11. It seems to me that this service constitutes a valid reason for complaint.

EXHIBIT No. 10.—*Letter of Kinetic Engineering Co., manufacturers of the patent kinetic organ blower, 562 Bainbridge Street, Brooklyn, N. Y., dated June 30, 1911.*

We desire to express our disapproval of the reduction of mail deliveries in Brooklyn from five to three. This reduction is giving us very poor service and is the means of interfering very greatly with the promptness by which we are known to act. Considerable correspondence passes between this office and our factory in Philadelphia, and formerly it was the rule that letters posted one day in Philadelphia would reach this office on the first delivery the next day. Now the rule is that such letters reach us on the second delivery, which is not until after 1 o'clock, making it practically impossible to attend to important matters which are usually contained in such letters until the day following, and this makes an unwarranted delay. Formerly, if a letter was delayed so that it did not reach the first delivery, the second delivery would bring it around 11 o'clock, which would give us time to attend to pressing matters. The information came to hand yesterday that a letter mailed in Philadelphia on the afternoon of the 27th was not delivered in Brooklyn until yesterday morning, the 29th.

As an illustration of the unsatisfactory conditions under present deliveries, let us state that an important order came to hand for quick delivery to Newark, upon delivery of which the progress on other work depended. Our factory being rushed with orders, this order had to take special course and it could not be stated the exact day shipment could be made. Shipment of this order was made yesterday by express and will be delivered to the consignee hours before the letter reaches this office saying it has been shipped, the information that shipment has been made coming over the telephone, an unnecessary expense. It is necessary to send a mechanic to dismantle

the machine before it can be taken into the building, and information after 1 o'clock would be late to send for such work, without incurring extra expense.

It is our opinion that expense could be saved in the administration of the postal service in other ways than by the loss to such cities as Brooklyn. At least, why cut the deliveries from five to three per day?

EXHIBIT No. 11.—*Letter of L. A. Wendt, president Court-Hamilton Board of Trade, 317 Hamilton Avenue, Brooklyn, N. Y., dated July 1, 1911.*

Do what you can to keep our postal deliveries as they were. They are few enough now. Our first delivery now reaches us at 10 a. m.

EXHIBIT No. 12.—*Letter of Committee of One Hundred, representing the business men and residents of Station C, Brooklyn, N. Y., dated July 1, 1911.*

We, a committee of 100 representing the business men and residents of Station C, Brooklyn, N. Y., do hereby join together to protest against the reduction of mail delivery service in Brooklyn from five to three daily deliveries, and request that this matter be immediately called to the attention of the Brooklyn Congressmen, and that they be urged to use their influence to have the service restored at once where it has already been cut, and to prevent any further contemplated reductions in the delivery service of the Borough of Brooklyn, and affix our signatures below:

N. I. Nathan, 5306 Third Avenue, shoe dealer; L. Spingarn, 5306 Third Avenue, men's furnisher; Emil Biele, 5312 Third Avenue, real estate; B. R. Schoonover, 5312 Third Avenue, real estate; Allison, 5322 Third Avenue, hatter; Stone, 5324 Third Avenue, dry goods; M. D. Barron, 5412 Third Avenue, dyeing and cleaning; J. Niodring, 5418 Third Avenue, cigars; H. Brodie, 5422 Third Avenue, delicatessen; Louis Ruskin, 5422 Third Avenue, cigars; Wm. Allen, 5514 Third Avenue, liquor; H. B. Bover, 5518 Third Avenue, hardware; J. W. Bergen, 5524 Third Avenue, cigars; Osborn Pharmacy, 5511 Third Avenue, pharmacy; Selig Taet, 5417 Third Avenue, dry goods; Herman E. Taet, 313 Fifty-fifth Street, salesman; Sam R. Kabat, 5415 Third Avenue, shoes; A. R. McGahie, 5319 Third Avenue, tea and coffee; Geo. Tilts, 313 Fifty-ninth Street, furniture; C. R. Pignol, 5209 Third Avenue, pharmacist; John J. White, 5201 Third Avenue, shoes; James Thompson, 5124 Fourth Avenue, confectionery; Wm. E. Schweers, 5214 Fifth Avenue, stationery; Henry Murphy, 5216 Fifth Avenue, florist; Adolph Grossman, 5218 Fifth Avenue, gents' furnishing; Glass & Silverman, 5302 Fifth Avenue, clothing; Leon Silverman, 5312 Fifth Avenue, liquors; Samuel Billitzer, 5314 Fifth Avenue, furniture; A. L. Marsh, 5402 Fifth Avenue, druggist; W. E. Galder, 5406 Fifth Avenue, bakery; P. E. Smyth, 5422 Fifth Avenue, hardware; A. E. Munyer, 5608 Fifth Avenue, haberdasher; S. V. Nults, 5702 Fifth Avenue, druggist; I. Brenner, 545 Fifty-seventh Street, liquor; S. Cohen, 5718 Fifth Avenue, jewelry store; Torkel Larsen, 5906 Fifth Avenue, builder; I. Sutceinck, 5912 Fifth Avenue, painting contractor; David Cohen, 5912 Fifth Avenue, dry goods; Morris Princer, 5707 Fifth Avenue, optometrist; N. Gough, 5519 Fifth Avenue, hardware; Henry M. Briggs, 414 Fifty-second Street, resident; John M. Donahue, 5505 Fifth Avenue, jeweler; W. L. Mahony, 446 Fifty-ninth Street, jeweler; Harry A. Michelsen, 414 Fifty-second Street, resident; Berk Bros., 5124 Third Avenue, clothiers; Rosenthal & Alferd, 5014 Third Avenue, clothiers; Kraft Bros., 5004 Third Avenue, jewelers; B. Abraham, 4922 Third Avenue, ladies' wear; S. Boschirtz, 4916 Third Avenue, jeweler; M. Kronenberg, 4914 Third Avenue, shoes; I. Kaplan, 312 Forty-ninth Street, tailor; S. Helpin, 4910 Third Avenue, hardware; Hoowitz & Spencer, 4908 Third Avenue, tailors; James H. Pigot, 4722 Third Avenue, real estate; F. Rosenthal, 4624 Third Avenue, druggist; R. Horowitz, 4620 Third Avenue, tailor; Harry Herzog, 4622 Third Avenue, hatter; J. Jacoboviv, 4606 Third Avenue, furniture; H. Henidin, 4604 Third Avenue, jewelry; Geo.

Uzmann, 4717 Third Avenue, cigar store; George J. Uzmann, 4717 Third Avenue, draftsman; John T. Hepelskoy 5813 Fourth Avenue, machinist; M. Spuell, 5006 Third Avenue, men's furnishings; Alexander, 5010 Third Avenue, hatter; Henry Tietje, 5001 Third Avenue, liquors; Morris M. Baker, 5101 Third Avenue, clothier; B. Guesberg, 5105 Third Avenue, clothier; J. Lang, 5107 Third Avenue, shoe store; C. Morris, 5111 Third Avenue, liquors, Wm. Lesmen, 5108 Fifth Avenue, optician; S. Fischer, 5106 Fifth Avenue, cigar store; P. D. Nelson, 5026 Fifth Avenue, druggist; B. Suzama, 5016 Fifth Avenue, dry goods; John C. Albert, 5014 Fifth Avenue, real estate; Charles Levy, 5008 Fifth Avenue, cigars; Ed. C. Cesny, 4919 Fifth Avenue, real estate; Frank Siederburg, 4910 Fifth Avenue, tea and coffee; MacKenzie & Harper, 4813 Fifth Avenue, real estate; Chas. H. Fox, 4806 Fifth Avenue, tailor; Christ Meyer, 4624 Fifth Avenue, pharmacist; W. Johnston, 571 Forty-fifth Street, resident; Earnest C. Miller, 4618 Fifth Avenue, real estate; Schwint Bros., 4516 Fifth Avenue, laundry; Wine Growers' Association, Steve Ward, 4512 Fifth Avenue, liquors; John G. A. Barnes, 4424 Fifth Avenue, druggist; E. P. Nelson, 4401 Fifth Avenue, pianos; Bluestone Nathan, 4507 Fifth Avenue, hardware; John McCabe, 4521 Fifth Avenue, real estate; H. J. Collister, 4521 Fifth Avenue, real estate; Geo. A. Norton, 4521 Fifth Avenue, insurance; J. Cpobus, 646 Fifty-fourth Street, provisions; L. Simon, 4619 Fifth Avenue, painter; C. A. Hanssen & Bro., 4711 Fifth Avenue; G. & R. Liquor Co., 4713 Fifth Avenue, liquors; G. Tock, 4719 Fifth Avenue, tailor; S. Auslander, 4723 Fifth Avenue, grocer; Edw. L. Karl, 4723 Fifth Avenue, butcher; Abraham Harris, 4807 Fifth Avenue, family liquor store; Michael Johnstone, 4909 Fifth Avenue, hardware; Ernest Sutim, 4919 Fifth Avenue, real estate.

EXHIBIT No. 13.—*Letter of William Stoothoff, 357 Macon Street, Brooklyn, N. Y., dated June 28, 1911.*

In last night's Brooklyn Eagle a statement is made in an article on the reduced mail service in parts of Brooklyn that Postmaster Voorhies was unwilling to admit of a reduction being made in the deliveries. He should know that our portion of Station D delivery has been reduced from five to three times daily. If he does not, then his subordinates are pulling wool over his eyes. This can be proved by the residents on our block on Macon Street, between Sumner and Lewis Avenues, while the block on the west of Sumner, which is served by Station B, has five deliveries.

Another matter that should receive attention is that it is after 9 o'clock in the morning before we get our first mail, yet it is a thickly settled residential section. The carriers are not to blame, as they both are hard-working and faithful.

EXHIBIT No. 14.—*Letter of Pearl Goodman, headworker Little Italy Neighborhood Association, Brooklyn, N. Y., dated July 2, 1911.*

In the name of all of the residents of this settlement I wish to protest against the mail service with which Brooklyn is now being supplied. Our first delivery, instead of coming shortly after 8 o'clock, as formerly, now comes about 10 o'clock, or even later. Last week a business letter, which it was important that we should get as early as possible, did not come until too late to act upon it.

In this connection I would like to say that our mail service in this district has been very unsatisfactory all winter. It has seemed to me, judging by the postmarks, that letters were very slow in being delivered and there has been a great deal of variance in the time. I happen to have a good deal of correspondence coming from Washington and have noticed that letters mailed at the same hour there were delivered here sometimes on the first delivery, sometimes not until the last delivery the next day. On one occasion a letter postmarked midnight at Washington one Thursday was not delivered until the first mail on the following Saturday, while a letter postmarked Friday midnight was delivered on the second mail Saturday. I also lost one unregistered package mailed in this district.

EXHIBIT No. 15.—*Letter of J. J. Johnstone, 6804 Third Avenue, Brooklyn, N. Y., dated June 27, 1911.*

I am one of the sufferers from the new mail service and feel justified in making complaint. Heretofore I received my morning mail never later than 8 o'clock and oftentimes as early as 7.30, which enabled me to leave my home at an early hour. Under the new system I am compelled to wait until 9.15 or 9.30, which hampers me very much, as I receive my instructions for my day's business in that mail, hence a great loss of time. It would seem to me that if they made only one delivery a day, and make it an early one, it would be far better than losing so much time in the morning when time is so valuable.

EXHIBIT No. 16.—*Letter of Charles A. Kelly, 450 East Sixteenth Street, Brooklyn, N. Y.*

I have read with interest your statement, published in to-night's Brooklyn Daily Eagle, regarding the contemplated change in mail deliveries in this borough.

If only three delivery trips are to be made it will mean that the territory to be covered will be so enlarged or lengthened that persons at the end of routes will not receive their first mail until 10.30 o'clock instead of 9.30 a. m. as at present.

The three-trip plan is now in operation in east New York with the above-stated result.

At the present time the Bronx and the east side of Manhattan have eight daily deliveries, and why this borough should be discriminated against is beyond comprehension, especially as it is of the utmost importance for the majority of business men residing or doing business in Brooklyn to receive their morning mail at the earliest possible moment, and also as frequently during the day as in any other part of New York City.

I am informed by one who is employed in the Brooklyn post office that the orders for the change came direct from the Postmaster General. If you desire this party's name I am at liberty to furnish it.

As you no doubt remember, this same or a very similar plan was agitated some few years ago, but after a mass meeting of protest was held at the old Academy of Music the matter was dropped by the postal authorities.

My interest in this matter is simply that of a citizen who earnestly desires to see all Brooklyn's business facilities enlarged—never curtailed.

EXHIBIT No. 17.—*Letter of Charles J. Titus, secretary Levi P. Morton Club, of Brooklyn, N. Y., dated June 11, 1911.*

This club by a full vote has taken action against the curtailment of the delivery of mail from five times a day to three, and would ask for your approval of same for the convenience of the people.

EXHIBIT No. 18.—*Letter and telegram of George F. Elliott, counselor at law, Mechanics' Bank Building, Brooklyn, N. Y., dated July 5, 1911.*

With full knowledge of the fact that you have ever been in touch with all that pertains to the best interests of Brooklyn, I take the liberty and pleasure of addressing you upon a subject that I know will demand your instant attention.

It is within your knowledge that in 1897 one of the largest mass meetings ever held in the old Academy of Music was called in behalf of more efficient letter-carrier service in Brooklyn, and a committee of three, consisting of your humble servant, A. S. White, then a member of Congress, and Thomas G. Sherman, were appointed to go to Washington and appear before the Postal Committee, of which Mr. Loud, of California, now dead, was chairman. The population at that time was composed of about 500,000, and the carrier service about 500, and there were but five deliveries a day, which was a very small number of letter carriers called upon to do the work at that time.

Without taking any personal credit, the committee succeeded in securing a large increase in the number of carriers to perform the work in Brooklyn in a more efficient manner than ever before, and the men were no longer compelled to bear large burdens upon their back, in some instances almost requiring the strength of a horse to carry. In 1888 the eight-hour law went into force, and at that time there was

established a five-trip schedule, which has operated from that time to the present. Even under the present schedule the Brooklyn post office should have a large increase in its letter-carrier force. No one is better acquainted with the territory that the postal service covers in Brooklyn than yourself. The Borough of Brooklyn is composed of a population augmenting 1,800,000. Its postal strength ranks fifth in the country, with a main office and some 21 substations. Its carrying force consists of 1,030 men at a minimum salary of \$1,100 and a maximum of \$1,200, and the latter amount is reached only after an examination had by the postmaster and upon his report for efficiency and length of service. I am cognizant of the fact that an investigation of the postal service of Brooklyn has been ordered and will come before the committee of which you are a member. I have many facts and figures that could be laid before your committee, which I am sure will seek to do even and exact justice to the letter carriers of Brooklyn. Facts and figures which I am sure ought to convince your committee that there should be no diminution of the present carrier force, but rather, as I have said above, should be increased.

I understand that the main, if not the sole, reason for such proposed reduction is the fact that the department at Washington makes the statement that it takes about 36 per cent of the moneys received at the Brooklyn post office to conduct its business, while in New York it takes less than 12 per cent to conduct the affairs of that office. That is a fallacious statement, Mr. Redfield, and should not weigh with the department for a single moment and for good and sufficient reasons, or which there are many. But of those chiefly to be considered is the fact that there are some 600,000 citizens of Brooklyn that go to Manhattan and return to Brooklyn every day, and there is a very large percentage of the people who live in Brooklyn who do their business in stamp buying in Manhattan for the very appreciable mail which comes to Brooklyn for delivery. The fact must not be lost sight of that while there may be a less percentage of revenue from stamps in the Brooklyn post office there is an increase in the letter-carrier service. The money for stamps all goes to the Postal Department at Washington, and they should give credit for the additional labor performed to the carriers in Brooklyn who really earn the money for the Government.

I know of no way to bring about a change in the quantity of stamps purchased except in appealing to the Brooklyn citizens who do business in New York to purchase their stamps here. Again, I say do not punish the letter carriers because that result obtains. In many ways Brooklyn is discriminated against. It is true, we have a five-trip schedule of delivery, but there are parts of Brooklyn that are favored by only three trips a day, whereas in the Borough of Manhattan, in the residential section, the density of the population being taken fully into consideration have as many as 10 deliveries often reaching up to 10 o'clock at night. As I have said, Mr. Redfield, we can furnish many additional facts for the consideration of your committee, but this letter is being written hurriedly that you may receive it by tomorrow morning for perusal and digestion. I am more than anxious that a subcommittee be sent here where the facts local to the situation will be brought home much more fully than an examination at Washington. As I have said in my telegram, the citizenship of the Borough of Brooklyn is thoroughly interested in this matter and I doubt not, if the facts were known to the general public here, the Academy of Music could be crowded with earnest protestants against the reduction of a five-trip schedule to the basis of a three-trip schedule.

[Telegram.]

BROOKLYN, N. Y., July 5, 1911.

HON. WILLIAM C. REDFIELD, M. C.,
Washington, D. C.

DEAR REDFIELD: Can subcommittee on postal investigation be sent to Brooklyn? See full particulars by letter. All Brooklyn interested.

GEORGE FREDERICK ELLIOTT.

EXHIBIT NO. 19.—*Letter of Mrs. H. C. Hazen, 143 Joralemon Street, Brooklyn, N. Y., dated June 28, 1911.*

I desire to make a complaint regarding the deliveries of mail. I find it very inconvenient that the first delivery is so late in the morning now—8.30 a. m. This makes it too late for me when I am frequently leaving town and depend on the early delivery for a letter I receive each day about illness in my family. I also have many business letters of importance, and I consider an early morning delivery the most essential of the day. I also think at best we have too few deliveries, and the Misses Chancey, of 140 Joralemon Street, join me in making this complaint and think Brooklyn should not be behind other cities of even smaller size.

EXHIBIT No. 20.—*Letter of O. H. White, 1241 Fortieth Street, Brooklyn, N. Y., dated July 3, 1911.*

Please find envelope of special delivery (stamp removed) mailed 1 p. m. general post office, New York, delivered by regular carrier, Parkville Station, Brooklyn, at 5.20 p. m., at his first stop, no substitutes being in that station. Though the number on letter is not correct, was not delayed on that account, but had to wait until regular carrier went out on his trip. This delay caused me considerable financial loss. You may use this letter in the investigation of Brooklyn post office if you desire to do so.

I am not criticizing or complaining of the superintendent or men in the Parkville Station, for they are laboring under difficulties. Parsimonious economy will not build up our district or the finances of post office in Brooklyn. We are 50 years behind New York in general progress, and I am glad you have given the word—"Advance."

EXHIBIT No. 21.—*Letter of Annie Haveland, 4 Spencer Place, Brooklyn, N. Y., dated July 3, 1911.*

I am adding my protest to many others which you doubtless have received to the three mails only a day. Can it be that Brooklyn is being still further sidetracked? It is run down enough already with its dirty, ill-kept streets, garbage-gathering nuisance, rowdism, etc. At this moment the writer is anxiously awaiting a letter the import of which amounts to almost life or death. It should have arrived in middle of morning; but now, thanks to our provincial mail arrangements, can not arrive till several hours later. Only those who are obliged to live in Brooklyn remain in it in these days. Instead of having our mail deliveries curtailed, we should be enjoying the benefits of the parcels-post system in vogue in more enlightened countries.

EXHIBIT No. 22.—*Letter of F. M. Brooks, president Matchless Brass Manufacturing Co., manufacturers of gas fixtures, 31-37 Washington Street, Brooklyn, N. Y., dated July 3, 1911.*

I wish to take this opportunity to call your attention to the fact that I am firmly in favor of readjusting the postal delivery so as to eliminate waste. I don't believe we need more than three deliveries a day in the residential sections. A great many people would like six deliveries a day, and never think what it costs as long as it doesn't come directly out of their pocket.

I would like to see the post-office expenses so adjusted that we can look forward to 1-cent postage and a new rate for parcels. Newspaper clamor on "reducing postal service" is, I am afraid, done very largely to catch the public, regardless of the merits of the question. Perhaps I am wrong in some of the views above expressed. If so, I should be very pleased to be advised to that effect. If I am correct, I sincerely hope you will use all your good offices to cooperate with the Post Office Department in giving us a reasonable delivery, or what we are entitled to for the volume of business done. I don't believe in asking for more than that.

Mr. REDFIELD. I think it proper to state for the record, Mr. Chairman, that this subject of reduced deliveries in Brooklyn was first brought to my attention about two weeks ago by three of the newspapers of the city. On the same day one of these newspapers stated that it had published a coupon on its first page and in two or three days had received 2,000 signatures protesting against this change, and it was at their suggestion that this matter was brought by me before the committee, and I have filed with the committee the newspapers in question, marking the articles with special reference to these cases. It was because of that fact I wrote the chairman of the committee, Mr. Ashbrook, the following letter, Exhibit No. 23:

EXHIBIT No. 23.

WASHINGTON, D. C., June 28, 1911.

HON. WILLIAM A. ASHBROOK,

*Chairman Committee on Expenditures in the Post Office Department,**Washington, D. C.*

MY DEAR SIR: Confirming what I verbally stated to you this morning, I now beg to hand you copies of the following papers, viz:

The Brooklyn Daily Eagle for June 26, note page 2; June 27, note page 3; the Brooklyn Daily Times for June 24, note page 1; June 26, note page 1; the Standard Union for June 27, note page 1.

The statements made in the above-named representative papers, which include different shades of political opinions and different portions of Brooklyn, are accompanied, I am informed, by over 2,000 signatures of citizens protesting against the reduction in the postal service and asking its restoration. In addition, the matter has been brought before me by correspondents.

The subject is of such serious importance that it should have the special and early care of the committee, and I therefore beg to report, as the subcommittee on complaints against the Brooklyn post office, that a condition is alleged to exist that requires early and thorough investigation, and to ask that a special meeting of the committee be called, if possible, during the week ending June 8, but, in any event, prior to the next regular meeting of the committee, set for June 12, for which latter meeting a special calendar has been arranged, in order that this subject may receive due inquiry. I ask that the officials of the Post Office Department having in charge the delivery service be instructed to appear before the committee at such special meeting and that the postmaster at Brooklyn be notified of said meeting and be invited either to attend or to submit such statement of facts as he may desire.

Yours, very truly,

WILLIAM C. REDFIELD.

With this letter I filed copies of the newspapers referred to.

Let me add at this point that I have received the following letter, which I will read to the committee:

EXHIBIT No. 24.—*Letter of Alys M. Gordon, 465 Prospect Place, Brooklyn, N. Y., dated July 5, 1911.*

Is there any reason that Brooklyn, a city of a million and a half, should have the same number of mails and hours as Plainfield, N. J.?

For over 20 years we were served by the main post office mails at 8 a. m. and no cause for complaint. Now we are in a district served by Station B, and it would be hard to find a worse administered branch—mistakes made by careless carriers, mail seldom delivered before 8.30; usually 8.50 to 9 a. m.

To show how little sense is used, when a block of apartments, 65 families, were built, the carrier's route was lengthened, not shortened.

I am a business woman, leaving between 8.20 and 8.30 a. m., and not receiving my mail before I left cost me \$25 this winter.

I lived in London in just the same locality as regards the post-office station, and there, at Cambridge, mail was delivered by 8 a. m., and in London 10 and Cambridge 5 deliveries daily.

If something could be done to improve the Brooklyn post office, and especially Station B, you would gain the thanks of hundreds as well as myself.

I will also read into the record the editorial from the Brooklyn Times of Monday, June 26, 1911, as follows:

LIMITING POSTAL FACILITIES.

It is very evident that the proposed cutting down of the delivery service in Brooklyn will prove exceedingly unpopular. The facts as presented in the Times on Saturday have already aroused a storm of protest. In many cases the new order has already gone into effect, and the delay is evidently the cause of great inconvenience to business men.

Brooklyn is a peculiar town in many ways, but especially in the extent to which business here is scattered. It is practically impossible to separate business districts from residential centers. Men of important interests have made it a custom to receive some of their most important mail at their homes, and a delay of an hour or so in the

morning is a hardship to them. Others have widely scattered interests which take them all over the city, so that they desire to look over important correspondence before starting out. The proposal to cut the number of deliveries in the more important so-called residential sections means a great loss and annoyance.

It is understood that the Post Office Department has no special animus against Brooklyn, but that this plan is a part of the economy régime instituted by Postmaster General Hitchcock, who is aiming to abolish the postal deficit. If it is carried out for all the large cities it will evidently prove unpopular and a loss to the business of the country. The department is not expected by the people to earn a revenue, and parsimony in this direction will hardly be tolerated. It is important that the feeling of the people on this matter be presented in the proper way to the department, and the Times will be glad to act as a medium through which they can be heard.

That is all I desire to submit for the present, Mr. Chairman.

Mr. ALEXANDER. Mr. Calder, have you anything to submit in reference to this matter?

**STATEMENT OF HON. WILLIAM M. CALDER, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF NEW YORK.**

Mr. CALDER. I have some letters I want to put in the record, Mr. Chairman, if I may. I have a letter addressed to me by National Funeral Directing Co., as follows:

EXHIBIT No. 25.

BROOKLYN, N. Y., *June 28, 1911.*

HON. W. M. CALDER,
No. 551 First Street, Brooklyn, N. Y.

DEAR SIR: I wish to enter my protest against the reduction of the mail delivery from five to three.

This means a serious handicap to us, and I trust that you will do all in your power as our Representative to prevent this becoming a permanent condition.

Very truly, yours,

NATIONAL FUNERAL DIRECTING CO.,
By GEO. W. PEASE, *Treas.-Manager.*

I took this matter up immediately with the postmaster of Brooklyn with the following result:

EXHIBIT No. 26.

POST OFFICE, BROOKLYN, N. Y.,
OFFICE OF THE POSTMASTER, EXECUTIVE DIVISION,
July 1, 1911.

HON. WILLIAM M. CALDER,
1648 Eleventh Avenue, Brooklyn, N. Y.

MY DEAR CONGRESSMAN: The communication from Mr. George W. Pease, 15 Greene Avenue, inclosed with your communication of the 29th ultimo, is returned herewith, and in reply thereto you are informed that arrangements have been made to effect four deliveries a day to the business address of Mr. Pease by carriers leaving the general office at 7 and 10 a. m., 12 noon, and 4.15 p. m., arriving at 15 Greene Avenue, approximately one-half hour later.

Respectfully,

E. W. VOORHIES, *Postmaster.*

I have also the following letter from Meurer Bros. Co., the largest tin-plate manufacturers in our part of the country:

EXHIBIT No. 27.

BROOKLYN, N. Y., June 29, 1911.

HON. WM. M. CALDER, *Brooklyn, N. Y.*

DEAR SIR: Referring to the conversation had with you to-day by our Mr. Andrew Meurer, we are inclosing you herewith a copy of a letter addressed to the postmaster here in Brooklyn, under date of June 22, also copy of letter written him to-day. Anything you can do in this matter to effect the betterment of postal deliveries we will gratefully appreciate and remain,

Yours, respectfully,

MEURER BROS. CO.,
C. H. BOLLES, Jr.,
General Manager.

I forwarded that letter at once to the postmaster and received the following reply:

EXHIBIT No. 28.

POST OFFICE, BROOKLYN, N. Y.,
OFFICE OF THE POSTMASTER, EXECUTIVE DIVISION,
June 30, 1911.

HON. WILLIAM M. CALDER,
1648 Eleventh Avenue, Brooklyn, N. Y.

MY DEAR CONGRESSMAN: In respect to your telephonic conversation of even date relative to the complaint of Messrs. Meurer Bros. Co., 567 Flushing Avenue, Brooklyn, N. Y., regarding the alleged lateness in delivery of mail at the above address, I inclose herewith for your information a copy of a letter addressed to Messrs. Meurer Bros. Co. this day, in answer to their several communications of June 22 and 29, respectively.

Respectfully,

E. W. VOORHIES, *Postmaster.*

The substance of the letter which was forwarded to Meurer Bros. Co. was that after June 30 there would be three deliveries to Mr. Meurer rather than two as they started out to do.

I have here a letter from S. S. Long & Bro., very large provision merchants at the Wallabout Market, dated yesterday:

EXHIBIT No. 29.

BROOKLYN, N. Y., July 5, 1911.

HON. WM. J. CALDER, *Washington, D. C.*

MY DEAR MR. CALDER: We write you this letter protesting about the change in the postal carrier service of our district with which you are very well acquainted.

The Wallabout Market as you know does business early in the morning in order to ship goods which are perishable. Since the postmaster of Brooklyn has made the changes in the different deliveries, we do not know when we are going to receive the mail orders. It is delivered now after all expresses have gone, and goods must be held over until afternoon.

We think and believe that such an important shipping point as this district, which includes the Wallabout Market and vicinity, should not be cut off from extension of business to their detriment and to the detriment of the property by not being able to ship goods on time. We trust you will give this your attention, and hope that the Postmaster General will see the error of his ways in cutting off business deliveries, which is "penny wise and pound foolish" economy.

Thanking you for your consideration,

Most respectfully, yours,

S. S. LONG & BRO.

I find upon investigation, Mr. Chairman, that under the old order of things the first delivery left the post office or the substation post office in Brooklyn substantially at 7 o'clock, the second delivery at 10 o'clock, the third at 12.30 o'clock, the fourth at 3 o'clock, and the fifth from 5 to 5.30 o'clock. Under the three-trip arrangement the first delivery leaves the post office at 7 o'clock, and I have not, except in a very few rare instances, much sympathy for the objection as to

the first delivery. The second delivery, however, does not leave the post office until 12 o'clock.

I am informed that the department has reduced the number of routes and established an auxiliary floating force of carriers. The reduction of the number of routes makes the early delivery a little late in some few sections of the city. The great objection, however, is the second delivery. Many people do not get their second delivery of mail until after 2 o'clock. This is most inconvenient to a large number of business men. The out-of-town mail does not reach Brooklyn until too late for the first delivery, and then when it does get to them, around 2.30, it is too late to bank their checks and too late to ship goods out that day. The third and last delivery leaves the post office one hour earlier than under the former system, so that letters that arrive previous to 5 o'clock, which under the former system would have been delivered the same day, must now wait over until the next morning. That is all I want to say just now.

Mr. REDFIELD. I would like to add a word to that. I am in entire accord with what my colleague, Mr. Calder, has said regarding the second and third deliveries; but I doubt if he put sufficient stress upon the results of the first delivery. My own experience agrees with the letters presented before the committee, in the respect that there has been a delay in the first delivery, so that it is not received before business men leave their homes, as it has been heretofore.

Mr. ALEXANDER. Dr. Grandfield, the First Assistant Postmaster General, is here. I presume he would like to make a statement in reference to these complaints. If so, we shall be very glad to hear from him. He is informed as to their nature.

TESTIMONY OF MR. C. P. GRANDFIELD, FIRST ASSISTANT POSTMASTER GENERAL.

(The witness was duly sworn by the acting chairman.)

Mr. GRANDFIELD. Of course, gentlemen, it goes without saying that neither the Postmaster General, nor any officer of the department, has any desire to do anything that will impair the efficiency of the service in the slightest degree. There has never been any attempt to economize at the expense of the service. The Postmaster General is responsible, in a large measure, for the present salary law under which the maximum salaries of letter carriers was increased from \$1,000 to \$1,200. Since the passage of that law the expenses of the City Delivery Service has increased. The average salary of letter carriers has been increased about \$200; and clerks the same way. So that, so far as economy is concerned, it has never been the Postmaster General's policy to save money either at the expense of the employees or of the service.

We recognized that the greatest leaks in the postal service were in the city delivery system. The carriers, naturally, from the nature of their employment, can not be given the same supervision as the clerks. They are away from the office, and we must rely, in large measure, on the honor of the men for faithful and efficient work. However, we can determine from our own records whether the carriers are doing a fair day's work or not.

In Brooklyn the expense of maintaining the letter carriers' service is much higher than in any other large city. As the Postmaster

General stated in his letter, the cost of the City Delivery Service in Brooklyn is nearly four times that of New York or Chicago in proportion to the gross receipts. It is more than double the cost in other large cities. These conditions led to an investigation. The inspectors reported—I am quoting the inspectors now, Mr. Redfield—

Mr. REDFIELD. Yes; I am following you very carefully.

Mr. GRANDFIELD (continuing). That Brooklyn is not exactly an important commercial city; that there are no very large business interests there—

Mr. REDFIELD. Look out.

Mr. GRANDFIELD. I am quoting the inspectors now, remember. That there are no large business interests there in comparison with other cities; no large factories; that it is a city of homes, a city of churches; and that the population is composed largely of people who do business in New York City.

Mr. REDFIELD. I do not believe Dr. Grandfield is responsible for such a statement. He is quoting.

Mr. GRANDFIELD. Oh, no. I am quoting the inspectors.

Mr. ALEXANDER. Right there, how many delivery districts are there in Brooklyn?

Mr. GRANDFIELD. There are 1,035 carriers, 412 double routes, 29 single routes, and 182 collectors. A double carrier route is a route where two carriers make the morning delivery and one is able to take care of the delivery after the first trip in the morning. That system obtains in only one other city to any great extent and that is New York City. In New York City the routes are arranged in very much the same way, except that in New York City three carriers are required to make the morning delivery; so that there are three carriers on each route in the business section of New York City. In Brooklyn practically the entire service is arranged on the basis of double routes—two carriers to a route. The two carriers go out in the morning with the first delivery. On a five-trip route the two would alternate on the remaining four trips.

Mr. ALEXANDER. Do you have a uniform system of five deliveries a day in Brooklyn?

Mr. GRANDFIELD. I have the figures here. In Brooklyn there were 4 two-trip routes; 126 three-trip routes; 11 four-trip routes; 304 five-trip routes; and 7 six-trip routes. Those are all double routes—two carriers to each route; that is, as to 412 of them. That makes 452 routes, and 412 of them are double routes. In addition to these delivery carriers there were two mounted carriers and 180 foot carriers—collectors engaged exclusively in collecting mail.

The estimated number of square miles served by carriers is 62½; estimated population served by carriers, 1,737,520, the population being, according to the census, 1,610,000. So we make deliveries outside of the city limits in certain directions. The average weight of the mail delivered by carriers is 42 pounds. On the two-trip routes 7 pounds is first class and 17 pounds other classes. On the three-trip routes 10 pounds is first class and 23 pounds other classes.

Mr. ALEXANDER. That is, the three-trip routes?

Mr. GRANDFIELD. Yes. On the four-trip routes 14 pounds is first class and 22 pounds other classes. On the five-trip route 17 pounds is first class and 27 pounds other classes. On the six-trip route 44 pounds is first class and 37 pounds other classes.

Mr. ALEXANDER. Are those six-trip routes in the business district?

Mr. GRANDFIELD. Yes; in the heavy business district. You will notice right there the distinction, that more than one-half of the mail delivered on these six-trip routes is first-class mail.

Mr. ALEXANDER. Forty-seven pounds?

Mr. GRANDFIELD. Forty-four pounds out of a total of 81 pounds. On the other hand, on the two-trip routes 7 pounds out of 24 is first class.

I think the city that approaches Brooklyn nearest in respect to postal receipts is St. Louis. I neglected to state, however, the total expense of the service as compared with the gross receipts. The percentage of cost of the City Delivery Service in Brooklyn is 45.60 per cent of the entire gross receipts. In St. Louis it is 17.79. The two cities rank five and six in point of gross receipts, the gross receipts at St. Louis being larger than at Brooklyn.

Mr. ALEXANDER. You find a marked difference in the cost of the service?

Mr. GRANDFIELD. There is a marked difference in the cost of the service, and also a marked difference in the number of deliveries made. St. Louis has 49 two-trip routes, 332 three-trip routes, 38 four-trip routes, 26 five-trip routes, and 71 six-trip routes. In other words, we were giving more than double the service in Brooklyn than we are giving in St. Louis.

Mr. CALDER. There are 71 six-trip routes as against 7 in Brooklyn.

Mr. GRANDFIELD. Yes; but they are delivering 115 pounds of mail daily on each of the six-trip routes in St. Louis.

Mr. ALEXANDER. You had better state the amount of mail, if you have it, delivered on each of the routes, so that we can have that also as a basis of comparison.

Mr. GRANDFIELD. I will read that. They have 2 one-trip routes in St. Louis, by the way. The weight of the mail of all classes is 42 pounds, of which 6 pounds is first class. On the two-trip route the average weight of mail is 55 pounds and 9½ pounds of it is first class. On the three-trip route 60 pounds of mail is delivered, of which 12.40 pounds is first-class mail. On the four-trip routes 51 pounds is delivered, 18.70 pounds being first-class mail. On the five-trip routes 76.25 pounds of mail is delivered, of which 34 pounds is first class. On the six-trip routes the weight of the mail is 115 pounds, of which 60.75 pounds is first-class mail. I think that shows conclusively that the four, five, and six trip routes in St. Louis are exclusively, or almost exclusively, business routes. Of course, in St. Louis, as in many other cities, there are factories and business houses scattered all through the residence section, but perhaps not to the same extent as in Brooklyn, and for that reason, perhaps, Philadelphia would be a fairer comparison to make.

In Philadelphia, where 1,206 carriers are employed as compared with 1,035 in Brooklyn, the territory served by carriers is estimated at 131 square miles, as against 62 for Brooklyn. The cost of the service is 21.13 per cent of the gross receipts. The number of trips is as follows:

There are 30 two-trip routes, 209 three-trip routes, 76 four-trip routes, 528 five-trip routes, 11 six-trip routes, 182 seven-trip routes, and 7 eight-trip routes. The collections in both cities, and in practically all cities, range from 1 up to 30.

In Brooklyn there are 10 collections daily all over the city practically. The inspectors reported, in going over the various routes, that in most of the territory the Brooklyn carriers were going over the same ground 15 times daily—that is, 5 deliveries and 10 collections.

The only test, it seems to me, that the department can apply properly in regulating the number of deliveries is the volume of mail, taking into consideration also the character of the business houses. Out of 1,600,000 population, Mr. Redfield has read complaints from 22 citizens, one of whom has no complaint to find with the service. We have not received any specific complaints at the department, and naturally we have not corrected these inequalities. Of course, if a business house is being deprived of its mail and it is interfering with its business, we will increase the deliveries; we will make special provision for all such cases. We expected to do that in the first instance, but in rearranging 400 carriers' routes necessarily some mistakes will be made. I can not understand how it is that the mail is not being delivered now as early, if not earlier, than it was under the old plan. It should be delivered considerably earlier, for this reason: We have 182 men engaged exclusively in making collections. We discussed the matter, and the postmaster agreed that he would utilize the services of these 182 men in making the first morning delivery. In other words, instead of reducing the force by 100, as Mr. Calder seemed to think, we have increased it by 182, and the delivery should be advanced instead of curtailed, so far as the first delivery is concerned. I am sure the complaints in these cases are complaints that have their origin in the fact that the routes have been changed, and the patron instead of being at the beginning of the route is now at the middle or the end of the route. But as many people or more are getting their mail earlier under this new arrangement than heretofore.

MR. ALEXANDER. You do not mean to say that the city carriers force has been increased by 182?

MR. GRANDFIELD. I mean to say this: The delivery force has been increased by 182 men, or 180 men. Instead of having eight hundred and some odd men making deliveries we have one thousand and some odd making deliveries on the first trip, because that is the heavy trip. The inspectors in their report stated that on the so-called business routes, where they were making five deliveries, the carriers left the office with 15 or 16 pounds of mail on the first trip, and on the other four trips they only took out 5 or 6 pounds, and in one case as low as 2 pounds, in some cases as low as 3 pounds, on the four succeeding trips after the first trip. In many instances the weight of mail delivered by two carriers working on the same route was under 50 pounds.

Mr. Redfield showed me a letter a few moments ago in which it was stated that the carriers are going out of their office overburdened with mail, and with loads that no man can carry. I have a report from the postmaster, dated July 4, showing that the heaviest load taken out by any one carrier on July 4 was 50 pounds. I realize that that is a heavy load on a hot day, and no doubt that will be equalized, because there is not that much mail ordinarily. The mail does not average anything like that amount. Of course, on some days, as Mr. Redfield suggested a while ago—Thursday—the volume of mail is very heavy; but we have to base the service on an average day,

rather than a heavy day or a light day. I feel confident that any legitimate complaint that is made to the Department regarding the delivery service at Brooklyn can be corrected, but I do not believe—

Mr. ALEXANDER. Referring to the complaints that are made here, now, can they be remedied where there is any merit in these complaints?

Mr. GRANDFIELD. Yes; if business men complain that they do not get their mail or if there is any delay in the delivery of their mail we can correct it, certainly. There is no question about it. I will admit that there will be cases in the residence sections where patrons who had been receiving mail at 7 o'clock because they happened to live at the beginning of the route will get their mail an hour later if the route is changed so that they are at the end of the route.

Mr. ALEXANDER. But he has been favored at the disadvantage of his neighbor heretofore.

Mr. GRANDFIELD. That is true.

Mr. ALEXANDER. And somebody has to be in that position.

Mr. GRANDFIELD. There is only one way by which the morning delivery can be facilitated, and that is for Congress to enact a law, recommended by the Postmaster General, that business houses and residences provide a receptacle in which the carriers can deposit their mail. Then we can make the deliveries at 7 o'clock in the morning, or at 6 o'clock, or at any other time; but if our carriers must wait until the doors are opened and somebody answers their ring at the door we can not start delivering mail earlier.

Mr. ALEXANDER. When we go to insert a provision of that kind in the Post Office appropriation bill, Representatives in Congress from all the cities are up in arms against it.

Mr. GRANDFIELD. In some of the cities the patrons have provided receptacles at more than one-half of the residences.

Mr. TOWNER. Dr. Grandfield, in a city of 1,600,000 people, is it possible to fairly serve the business and mail interests of the people upon any uniform basis?

Mr. GRANDFIELD. It is not.

Mr. TOWNER. Are not the varying needs of the people in such a widely diversified community as Brooklyn is shown to be such as that the matter will have to be adjusted from time to time as the needs of the people are developed?

Mr. GRANDFIELD. Unquestionably.

Mr. TOWNER. Now, I was going to ask this question, Doctor: Is it your understanding that there has been for the whole of the city of Brooklyn a reduction from the deliveries that were made previously, being five in number, down to three in number, all over the city?

Mr. GRANDFIELD. Certainly not.

Mr. TOWNER. That is a mistake, then?

Mr. REDFIELD. It is all over the largest part of the city; not the center, but the largest portion. I may say that to you.

Mr. GRANDFIELD. I have here a statement that shows what territory has been curtailed.

Mr. CALDER. Doctor, you put in the record a statement of the number of two, three, four, five, and six trip routes that you had

formerly. Can you give us now the number of two, three, four, five, and six trip routes?

Mr. GRANDFIELD. Yes; I can give you that. [Reading from report of Brooklyn postmaster:]

General post office: This district comprises an area of $3\frac{1}{4}$ square miles, with an estimated population of 204,280; formerly served by 130 delivery carriers, now served by 99 delivery carriers. There were originally 7 double six-trip routes and 58 double five-trip routes. There are now 6 double six-trip routes and 27 double three-trip routes, the latter serving the residential districts. Throughout the residential part of the general office, however, are scattered large business concerns of various character, and in order to provide proper service to the business interests it was deemed expedient to establish two distinct delivery routes in the delivery of mail to the concerns in question in order that it would not be necessary to provide a greater number of trips in the residential territory in which they are located.

Mr. ALEXANDER. Right there. I understand that the business is not concentrated in Brooklyn as it is in New York City?

Mr. GRANDFIELD. No, sir. From my knowledge of Brooklyn I would say that Brooklyn resembles Philadelphia in very many respects. There are centers of business scattered all through the residence territory.

Mr. ALEXANDER. Is it practicable to arrange the routes and the carriers so as to have the mail delivered more frequently to these business houses, scattered as they are, and to omit the delivery to residences?

Mr. GRANDFIELD. Certainly it is. In the city of Washington there are two and three deliveries made in residence sections in different parts of the city where there are few business houses. There may be a drug store or grocery store, but it is not important for these business houses to get their mail more than three times a day, and consequently we do not make more deliveries. If there is a manufacturing establishment or any mercantile concern dependent on the mail for its business, we make a special delivery to such places.

Mr. TOWNER. You do make special deliveries to hotels in residential sections?

Mr. GRANDFIELD. Certainly. The same thing is done in Brooklyn, and we expect to continue to do it. But the question is, Shall the Post Office Department make five deliveries to every residence in the city of Brooklyn and not in other cities?

Mr. CALDER. I noted your statement relative to the five deliveries in Philadelphia.

Mr. GRANDFIELD. Yes.

Mr. CALDER. You have over 500 five-trip deliveries in Philadelphia.

Mr. GRANDFIELD. Yes; and Brooklyn had 800.

Mr. CALDER. Five-trip deliveries?

Mr. GRANDFIELD. Yes; it did have.

Mr. CALDER. But you have reduced us in Brooklyn to less than 100 of the four, five, and six deliveries.

Mr. REDFIELD. And you have reduced your carriers in the central station, the busiest part of the city, from 130 to 99.

Mr. GRANDFIELD. That is, we have reduced the routes; not the carriers. There are just as many carriers there now as there ever were.

Mr. REDFIELD. When the proper time comes, I would like to ask you a few questions.

Mr. GRANDFIELD. This is the whole business——

Mr. REDFIELD. Put that right in the record.

Mr. ALEXANDER. That has been called to our attention, now, and we would be glad to have you read it.

Mr. GRANDFIELD. Take this Flatbush station, for instance——

Mr. ALEXANDER. Let us hear that.

Mr. GRANDFIELD. Located at 828-830 Flatbush Avenue. It is described as the largest and best suburban district within the delivery of the Brooklyn office.

Mr. REDFIELD. That is the truest thing yet.

Mr. CALDER. Mr. Redfield lives there.

Mr. GRANDFIELD (reading from report):

There were originally 6 double five-trip routes and 14 double three-trip routes. In the reorganization of this station there were 6 double four-trip routes, 10 double three-trip routes, and 4 combination collection and delivery routes placed in operation, thus saving two men. The four-trip routes installed at this station were not instituted for the business interests for the reason that the same is confined to small stores with few exceptions. The quantity of mail to be handled necessitated the arranging for the four-trip schedule. This station has an area of $4\frac{1}{2}$ square miles and a population approximating 50,764.

Mr. CALDER. Then the service in Mr. Redfield's particular community has not been very much disturbed, has it?

Mr. GRANDFIELD. Apparently not.

Mr. REDFIELD. It has been reduced one delivery.

Mr. GRANDFIELD. One delivery in part of the territory. It has really been reduced from five to four.

Mr. CALDER. I would like it to go in the record right now that the deliveries at my office, where I get my office mail, have been reduced from five to three deliveries.

Mr. GRANDFIELD. What is the station?

Mr. CALDER. V.

Mr. GRANDFIELD. I will read what it says about V.

Mr. REDFIELD. I want you to read again the statement you made about Flatbush, as to the population of the district.

Mr. GRANDFIELD (reading):

Flatbush Station, 828-830 Flatbush Avenue. The largest and best suburban district within the delivery of this office. There were originally 6——

Mr. REDFIELD. The population, I mean.

This station has an area of $4\frac{1}{2}$ square miles and a population approximating 50,764.

Mr. REDFIELD. I call your attention to the fact that the United States census for the twenty-ninth ward, which is but a portion of the district covered by this station, has a population of 70,399. That is all. Dr. Grandfield, if you will pardon me, it is perfectly evident to me, as a citizen of Brooklyn, that you have been entirely misinformed all through this thing.

Mr. GRANDFIELD. I will say, gentlemen, that this statement was prepared by the postmaster of Brooklyn and signed by him, and I think he intends to report the exact facts.

Mr. REDFIELD. There is no question about that.

Mr. CALDER. Pardon me. Mr. Redfield, I understand you speak from the Eagle Almanac. Do you refer to the population of the assembly district?

Mr. REDFIELD. No; the population of the twenty-ninth ward.

Mr. CALDER. Does that post office take in all of the twenty-ninth ward?

Mr. REDFIELD. It takes in more than that.

Mr. CALDER. I am quite certain that Borough Park is not taken in at all.

Mr. REDFIELD. That is not in the twenty-ninth ward.

Mr. CALDER. Yes; that is in Flatbush. You will find that that does not take in all of the twenty-ninth ward.

Mr. GRANDFIELD. What did you say the population was according to that?

Mr. REDFIELD. 70,399, in the twenty-ninth ward only.

Mr. CALDER. Station V delivers part of the twenty-ninth ward?

Mr. GRANDFIELD. Undoubtedly. This station does not serve all of that ward. That would make each carrier serve 1,700 people, which is more than a carrier ordinarily serves.

Mr. REDFIELD. My point is that the carriers there are doing more than they ought to do, and we are not getting the delivery that we should get. I do not think it is necessary to discuss that. We will get the postmaster of the Flatbush station before the committee before we are through with it, and we will see.

Mr. GRANDFIELD. I will read what they have to say about Station V. That is in Mr. Calder's district. [Reading from report:]

Station V (299-301 Ninth Street). Three-quarters of this station district is comprised of a very high-class residential and apartment section.

Mr. CALDER. Pretty nearly as good as his (Mr. Redfield's), but not quite.

Mr. GRANDFIELD (continuing reading):

That part of the district located on Gowanus Canal and New York Bay is devoted to large business interests. There were originally 22 double-five trip and 1 double-three trip routes at this station. There are now 12 four-trip double and 8 three-trip double routes installed, reducing the number of men from 46 to 40, thereby saving 6 carriers. The area of this station is $2\frac{1}{4}$ square miles and the approximate population 100,544.

Mr. REDFIELD. The largest part of that, as you observe the report says, is a thickly built-up business district.

Mr. CALDER. That delivers part in your district, too.

Mr. REDFIELD. That is a thickly built up neighborhood, a heavy manufacturing district.

Mr. GRANDFIELD. The fact remains that in every other city we have more two and three trip routes than any other kind. In Brooklyn we have more five-trip routes than any other kind. Mr. Calder, you compared Philadelphia with Brooklyn and stated that where Brooklyn had 100 routes Philadelphia had 400, was it not?

Mr. CALDER. Over 500 under the new conditions.

Mr. GRANDFIELD. Over 500 under the new conditions; but the receipts in Philadelphia are several times the receipts in Brooklyn.

Mr. CALDER. And it covers twice the area; and I would call your attention to the fact that most of the people living in Brooklyn, who have business in New York and who have their manufactories in Brooklyn, buy their stamps in New York. That is against us when you figure our receipts.

Mr. GRANDFIELD. But after all, when we compare the weights of mail, we find that the weight of mail delivered by each carrier is less in Brooklyn than in any other city.

Mr. ALEXANDER. It is doubtless true that where they buy stamps in New York the business is done in New York.

Mr. GRANDFIELD. Undoubtedly that is true. They mail letters there and receive them there. I think the postmaster of New York will tell us that more stamps are bought in Brooklyn and used in New York than the reverse. He explained to me in that way why it was that Chicago went ahead of New York in receipts one-quarter, by saying that the people who live in New Jersey and do business in New York buy their stamps in New Jersey and bring them over to New York to put on their letters; and the same way with residents of Brooklyn who do business in New York.

Mr. ALEXANDER. Is there anything else, gentlemen?

Mr. REDFIELD. I want to ask Dr. Grandfield some questions, if I may, Mr. Chairman.

Mr. ALEXANDER. Certainly.

Mr. REDFIELD. Are these [indicating] the reports of the inspectors?

Mr. GRANDFIELD. Oh, no. This is the report of the postmaster in regard to how the service has been curtailed.

Mr. REDFIELD. I am going to ask that we have furnished to the committee, Mr. Chairman, a statement from the postmaster at Brooklyn giving the names and addresses of the firms and business houses that call at the general post office or at any of the larger stations for their mail instead of having the same delivered to them.

Mr. GRANDFIELD. Do you mean box renters? We can give you that.

Mr. REDFIELD. No. I mean the people who can not get their mail delivered properly and for that reason call for it. I ask to have furnished to the committee the names and addresses of firms and business people who call at the stations and at the general post office for their mail instead of having it delivered to their houses.

Mr. TOWNER. I would suggest as part of that, Mr. Redfield, that you ask that the postmaster state approximately the time these people would have been served by the carriers.

Mr. REDFIELD. Oh, yes; any statement that the postmaster cares to make. What we want are the facts precisely.

Mr. CALDER. May I interpose this, Mr. Redfield: And the length of time these firms have been calling for their mail.

Mr. REDFIELD. Yes. I think we also ought to have before us, Mr. Chairman, the reports of the inspectors upon which this action is based. I would like to see what those inspectors state. Is there any objection to that?

Mr. ALEXANDER. Is there any objection to that being available for the inspection of the committee?

Mr. GRANDFIELD. Oh, no. The Postmaster General undoubtedly will place any of the records of the department at the disposal of the committee. The report is very long and it is a very interesting report.

Mr. REDFIELD. Are you personally familiar, Dr. Grandfield, with the business conditions of Brooklyn?

Mr. GRANDFIELD. No.

Mr. REDFIELD. Have you ever visited Brooklyn and examined into them?

Mr. GRANDFIELD. No.

Mr. REDFIELD. Did you know that the operating offices——

Mr. GRANDFIELD. Of course I have been in Brooklyn often.

Mr. REDFIELD. Did you know that the leading refineries and the operating offices of the American Sugar Refining Co. are in Brooklyn?

Mr. GRANDFIELD. Yes, sir.

Mr. REDFIELD. And that those of Arbuckle Bros. are in Brooklyn?

Mr. GRANDFIELD. The coffee men?

Mr. REDFIELD. Yes; and the sugar men.

Mr. GRANDFIELD. Yes.

Mr. REDFIELD. And the American Manufacturing Co. and the Chelsea Fiber Mills? Did you know they were in Brooklyn?

Mr. GRANDFIELD. No, sir.

Mr. REDFIELD. And the Standard Oil Co.?

Mr. GRANDFIELD. I know, of course, that they have an office there. [Laughter.]

Mr. REDFIELD. And their works?

Mr. GRANDFIELD. Yes.

Mr. CALDER. They are everywhere.

Mr. REDFIELD. And the Bush Terminal Co.?

Mr. GRANDFIELD. I am not familiar with the names of—

Mr. REDFIELD. Do you know that there are very many large business houses that have not only their works but their only offices in Brooklyn? Such, for example, as the E. W. Bliss Co. and the J. H. Williams Co., and others?

Mr. GRANDFIELD. I know that Brooklyn is an important city.

Mr. REDFIELD. Do you know its relative rank as a manufacturing city?

Mr. GRANDFIELD. No, sir.

Mr. REDFIELD. Do you know what proportion of its people work at home as compared with those who work in Manhattan?

Mr. GRANDFIELD. I only know what the Brooklyn Bridge shows at certain hours of the day.

Mr. REDFIELD. What does that show that is an answer to my question?

Mr. GRANDFIELD. It shows that a great many people who live in Brooklyn leave New York in the evening to go to Brooklyn, and return in the morning.

Mr. REDFIELD. Do you know what proportion of the population that is?

Mr. GRANDFIELD. No; I do not know. I have heard it estimated that the majority of the people in Brooklyn have business in New York City.

Mr. REDFIELD. Have you any knowledge as to whether that estimate is either true or absurdly out of true?

Mr. GRANDFIELD. I think that the statement that Brooklyn is a city of homes, and that a large number of the people who transact business in New York live in Brooklyn is, in a general way, true. I do not know the proportion, of course.

Mr. REDFIELD. Are you informed as to the relative increase in the population of Brooklyn as compared with that of other parts of New York?

Mr. GRANDFIELD. I know it is increasing very rapidly in population.

Mr. REDFIELD. But are you familiar with its relative rate of increase?

Mr. GRANDFIELD. No. At least, if so, I have forgotten it. I probably have looked it up at some time.

Mr. REDFIELD. I call your attention to the fact that Brooklyn, according to the United States census, is increasing rather more rapidly in population than the average of the entire city of New York. Were you aware of that fact when you ordered this reduction?

Mr. GRANDFIELD. We have not ordered any reduction.

Mr. REDFIELD. Has this reduction in the number of deliveries from five to three been made without orders?

Mr. GRANDFIELD. Oh, no. I thought you meant in the force in the Brooklyn office.

Mr. REDFIELD. I am speaking of the reduction in the carrier service.

Mr. GRANDFIELD. Yes; we know that the city of Brooklyn is increasing very rapidly in population; that there are certain residential parts of Brooklyn or its suburbs that are not now being served by carriers at all, and that it is the business of the Post Office Department to arrange to give these people city delivery service.

Mr. REDFIELD. You are aware that the city of Brooklyn adds annually to its population approximately 50,000 people?

Mr. GRANDFIELD. I do not know what the figures are. It is a rapidly growing city.

Mr. REDFIELD. Are you aware that it is increasing at the average rate of 40 per cent per decade, as compared with an increase of 26 per cent per decade in the population of the Borough of Manhattan?

Mr. GRANDFIELD. I do not carry all those figures in my mind; no.

Mr. REDFIELD. Are you aware of the fact that the population of the Borough of the Bronx in 1910 was 430,980 and the population of the Borough of Brooklyn was 1,634,351?

Mr. GRANDFIELD. I know what the population of Brooklyn is and what the population of New York is.

Mr. REDFIELD. Can you explain to the committee why eight deliveries a day exist in the Bronx, and are maintained there, while Brooklyn, which had five deliveries per day, is reduced to three?

Mr. GRANDFIELD. I can.

Mr. REDFIELD. In view of the relative growth of Brooklyn, and its excess population over that of the Bronx?

Mr. GRANDFIELD. I can. In New York the weight of the mail necessitates these frequent deliveries.

Mr. REDFIELD. Pardon me. I am not speaking of New York. I am speaking of the Borough of the Bronx.

Mr. GRANDFIELD. Unfortunately, I do not know what the Borough of the Bronx is as differentiated from the rest of New York.

Mr. REDFIELD. The Borough of the Bronx, I will state, is the section of New York City which lies north of the Harlem River. I ask you to separate the facts as to the Borough of the Bronx from the facts relating to Manhattan Island, and place them before the committee. This is the Borough of the Bronx here [indicating on map]; this section north of the Harlem River here [indicating].

Mr. GRANDFIELD. Yes.

Mr. REDFIELD. Except for that section there [indicating], it is a suburban section, just exactly as Brooklyn is, except that Brooklyn has nearly five times the population.

Mr. GRANDFIELD. I do not want the committee to get the impression that we make eight deliveries all over New York City.

Mr. REDFIELD. No, sir; I understand that you do not; but I would like to get the facts as regards the Bronx, and what the deliveries are in the Bronx, and how far they have been reduced.

Mr. GRANDFIELD. There are 12 two-trip routes in New York City, 32 three-trip routes, 40 four-trip routes, 57 five-trip routes, 125 six-trip routes, and so on.

Mr. REDFIELD. Yes. Of course, I am talking of the borough which corresponds with Brooklyn in character, although it is much smaller; and I want to find out why the service is maintained here at a much larger ratio than it exists in Brooklyn, and why it is not reduced; or if it is reduced—

Mr. ALEXANDER. Do you know that there are eight deliveries in the Bronx?

Mr. REDFIELD. I know there are in some parts.

Mr. CALDER. Dr. Grandfield, you got down to the number of six-trip deliveries. Is that all?

Mr. GRANDFIELD. No; I will read them all if you care to have me do so.

Mr. CALDER. Let us have that in the record.

Mr. GRANDFIELD. They are not all added up. There are 135 seven-trip routes, 332 eight-trip routes, and 24 nine-trip routes. The collections vary. There are 27 boxes from which collections are made once a day; 26 from which collections are made twice a day; 96 from which collections are made 3 times a day; 76 from which collections are made 4 times a day; 19 from which collections are made 5 times a day; 26 from which collections are made 6 times a day; 232 from which collections are made 7 times a day; 11 from which collections are made 11 times a day; 187 from which collections are made 12 times a day; 65 from which collections are made 14 times a day; 159 from which collections are made 15 times a day; 1,479 from which collections are made 16 times a day; 14 from which collections are made 17 times a day; 25 from which collections are made 18 times a day; 96 from which collections are made 19 times a day; 33 from which collections are made 21 times a day; 228 from which collections are made 24 times a day; 160 from which collections are made 27 times a day; 611 from which collections are made 28 times a day; and 96 from which collections are made 30 times a day.

Mr. CALDER. The Borough of the Bronx, as I understand it, is under the jurisdiction of the postmaster of the city of New York—Postmaster Morgan?

Mr. GRANDFIELD. If it is part of New York City it is.

Mr. CALDER. It is. That is true. The boroughs of Manhattan and the Bronx are under the jurisdiction of Postmaster Morgan?

Mr. GRANDFIELD. I do not know.

Mr. CALDER. Just above the Harlem River.

Mr. GRANDFIELD. You would call that a political division, would you?

Mr. CALDER. That is a political division; yes. You are treating the Borough of the Bronx as an integral part of the city of New York?

Mr. GRANDFIELD. Yes.

Mr. CALDER. And you are treating Brooklyn as an entirely different proposition?

Mr. REDFIELD. That is the point exactly. That is the core of it.

Mr. CALDER. The Borough of the Bronx, Dr. Grandfield, has about one-half the area of Brooklyn.

Mr. REDFIELD. And one-fifth of the population.

Mr. CALDER. And one-fifth of the population; and has one-third of it laid out in farms yet.

Mr. REDFIELD. Yes.

Mr. CALDER. And a great deal more farm acreage actually improved.

Mr. GRANDFIELD. That is where we are making one delivery a day, I suppose?

Mr. CALDER. Yes; at a few places.

Mr. GRANDFIELD. But I do not think, in a general way, there is any comparison between the business districts of New York and the business districts of Brooklyn, so far as the necessity for the frequent delivery of mail is concerned.

Mr. CALDER. I think it is a fair statement that we do not need eight deliveries all over Brooklyn.

Mr. GRANDFIELD. Do you think you need it in any part?

Mr. CALDER. I think it could be very properly used around the post office.

Mr. GRANDFIELD. More than Chicago, St. Louis, San Francisco, or Cincinnati?

Mr. CALDER. They have not that particularly congested center.

Mr. GRANDFIELD. Do you mean that it is more congested in Brooklyn than in St. Louis?

Mr. CALDER. Around the post office we are entitled to as much as they have in New York. It is like New York. You can not differentiate it for a moment.

Mr. REDFIELD. That little area around the post office is just as congested as a like area in New York.

Mr. GRANDFIELD. That is the part of the city where the carriers take out 21 pounds a day.

Mr. CALDER. We have six deliveries in that section?

Mr. GRANDFIELD. Yes.

Mr. REDFIELD. We have no complaint as to that. I am not asking for an increase, but I do think that you fail entirely to explain to us the point Mr. Calder raises here, namely, this: That you treat one portion of New York City in one way, and you treat another portion of New York City in another and a worse way. You differentiate Brooklyn by this. You do not so differentiate the Borough of the Bronx. Why not? Why are they, who do not contribute what we contribute, who have not the population we have, and who have not the area we have, given more and unreduced facilities, and why are we given less, and why are what we have taken away from us?

Mr. GRANDFIELD. The answer is a business man's answer. They pay for it and you do not.

Mr. REDFIELD. But that you do not show, and we ask you to come here and show what revenue is derived from the Borough of the Bronx and that portion of the post office in New York which is included in the Borough of the Bronx. Come and show us what they pay and what they have, and then, and only then, deal with us on any other basis than as an integral part of New York City.

Mr. GRANDFIELD. Take City Island, New York, for instance. We make two and three deliveries there.

Mr. REDFIELD. There is no reason for making three deliveries in City Island which does not apply—

Mr. GRANDFIELD. We only make two.

Mr. REDFIELD (continuing). Which does not apply to the most remote parts of Brooklyn.

Mr. GRANDFIELD. I agree with you.

Mr. REDFIELD. That is off in the Sound, miles away from anything; and if City Island gets two deliveries a day there is no part of Brooklyn that ought not to have six.

Mr. GRANDFIELD. Do you mean that there is no suburban territory in Brooklyn that compares with City Island?

Mr. REDFIELD. There is Barren Island. You can deal with that precisely as you deal with City Island. There is a big manufacturing establishment down there, too; but with all that, I think nobody would make any complaint if they got two or three deliveries there. But to take this section here in Mr. Calder's district, and in my district, and in Dr. Wilson's district, and in this great manufacturing district at the eastern end of Brooklyn, and put that on a basis of three deliveries a day is absurd.

Mr. GRANDFIELD. We have not done that.

Mr. REDFIELD. Yes; that is what has been done. That is the complaint contained in these letters that I have read here. Those concerns whose letters I read are located in the heart of Brooklyn.

Mr. GRANDFIELD. But that does not represent all business men by any means.

Mr. REDFIELD. No; but it represents the biggest business area.

Mr. GRANDFIELD. But we are making deliveries in the same way, exactly.

Mr. REDFIELD. But in a very small part of it, and I am referring to the letters that I placed before the committee. I point out to you that they cover the entire circumference of Brooklyn around a central core.

Mr. GRANDFIELD. Do you think the post office should make five deliveries to every resident of Brooklyn?

Mr. REDFIELD. I did not say that.

Mr. GRANDFIELD. I know.

Mr. REDFIELD. But I say this: That in a city where the population is increasing at the average rate of 50,000 a year, and faster in its rate of increase than the great city of New York itself—meaning the Borough of Manhattan—to reduce the actual existing facilities by 40 per cent is absurd in the first place and wrong in the second place, and that it has not been done with any thoughtful consideration of the facts. I would like to ask you—

Mr. GRANDFIELD. I am sure, Mr. Redfield, that after you read the inspector's report you will conclude that it was after thoughtful consideration.

Mr. REDFIELD. I would like to ask you, then, whether any one of the numerous civic bodies or boards of trade in Brooklyn, comprising the business men of Brooklyn, were consulted in the matter?

Mr. GRANDFIELD. No; we consulted our agent there, the postmaster.

Mr. REDFIELD. How long has he been in office?

Mr. GRANDFIELD. He has been in office about two years, I think.

Mr. REDFIELD. How long, precisely? Can you furnish that to the committee?

Mr. GRANDFIELD. Yes.

Mr. REDFIELD. Is it not a fact that he is relatively a newcomer?

Mr. GRANDFIELD. Yes.

Mr. REDFIELD. And that his personal residence is at a most distant point in Brooklyn, namely, near the water front, out in the least thickly settled district of the city?

Mr. GRANDFIELD. But we consulted the other officers of the Brooklyn post office—men who had been there all their lives.

Mr. REDFIELD. And there has been no objection or protest from any of them?

Mr. GRANDFIELD. Certainly. We modified our plans in several respects.

Mr. CALDER. Dr. Grandfield, may I just ask this question, please—

Mr. GRANDFIELD. The point is right here: Is it proper for the post office to make five deliveries in purely residence territory? All we propose to do is to curtail the deliveries in purely residence sections from five to three. Out of your population of 1,500,000 you have brought forth 22 complaints.

Mr. REDFIELD. I have 2,000 more, if you will pardon me.

Mr. GRANDFIELD. I can only judge by what you read.

Mr. REDFIELD. I take your own statement, Dr. Grandfield, that, as I understood it, you put five deliveries a day in business districts. Now, I call your attention to this Flatbush district—

Mr. GRANDFIELD. It depends, of course, on the character of the business.

Mr. REDFIELD. I call your attention to the Flatbush district, and point out to you that there are banks and hundreds of business places along through that district, and ask you why that was assumed to be a purely residential district, and why these business men were included?

Mr. GRANDFIELD. I read you the report of the postmaster—

Mr. REDFIELD. I heard it.

Mr. GRANDFIELD. Who makes this statement: "The largest and best suburban district within the delivery of this office." It is either suburban or it is not. "There were originally 6 double five-trip routes and 14 double three-trip routes. In the reorganization of this station there were 6 double four-trip routes, 10 double three-trip routes, and 4 combination collection and delivery routes placed in operation."

Mr. REDFIELD. "Thus saving two men," it goes on.

Mr. GRANDFIELD. "Thus saving two men."

Mr. REDFIELD. That is, you have actually taken off carriers from the Flatbush office. I would like to ask you there another question. Have you any knowledge, or do your reports show, anything as to the relative rate of growth in that portion of the city as compared with any other portion?

Mr. GRANDFIELD. I do not know that our reports show that; no, except that they show the increased volume of mail handled. Our delivery service is governed in a large measure by that. If the mail is there to deliver, we put men on to deliver it. If it is not there we take them off.

Mr. REDFIELD. Does your report show not only the volume of mail now handled, but its rate of increase?

Mr. GRANDFIELD. Certainly. The postmaster keeps such records. How else would he know—

Mr. REDFIELD. What do those records show as regards that particular section as to the rate of increase?

Mr. GRANDFIELD. They would show how much mail is received and how much is dispatched, how many men are employed, how many hours they work, and how many pieces of mail they handle.

Mr. CALDER. In that district it has doubled in 10 years.

Mr. GRANDFIELD. Yes; and no doubt the post-office force has doubled in 10 years.

Mr. REDFIELD. Within a radius of 1,000 feet of my house 500 new dwellings were going up at once—in a circle 2,000 feet in diameter.

Mr. ALEXANDER. Now?

Mr. REDFIELD. That has been the case.

Mr. CALDER. About two years ago there were 2,000 at one time. I would like to ask you a question, if I may.

Mr. GRANDFIELD. Certainly.

Mr. CALDER. The Borough of the Bronx you have considered as a part of the city of New York in estimating the revenues and the amount of mail carried.

Mr. GRANDFIELD. Yes.

Mr. CALDER. And you have given them the advantage in this service of the New York City business deliveries?

Mr. GRANDFIELD. I do not admit that we are making eight deliveries there.

Mr. CALDER. Five?

Mr. GRANDFIELD. I do not admit that we are making five.

Mr. CALDER. I will make the statement now that 90 per cent of the delivery is at least on the basis of five deliveries per day.

Mr. GRANDFIELD. Perhaps so.

Mr. ALEXANDER. That is a fact as yet unascertained. Doctor, could you furnish that?

Mr. GRANDFIELD. Certainly; we can give you that. Of course, I will have to write to the postmaster at New York and have him furnish the information.

Mr. ALEXANDER. I understand.

Mr. CALDER. Brooklyn is to-day more important in a business way and has a much more congested population.

Mr. REDFIELD. One hundred times more. I call your attention, Dr. Grandfield, to these facts: That the assessed valuation of the Borough of the Bronx is a little in excess of \$493,000,000, and the assessed valuation of the Borough of Brooklyn is a little in excess of \$1,404,000,000, and I ask you whether you have, in considering this question, given any heed whatever to such facts?

Mr. GRANDFIELD. I will have to answer that question by asking another. Would you consider it a fair proposition to take the revenue from the Borough of the Bronx and pay the same percentage of that revenue for a city delivery service as we do in Brooklyn?

Mr. REDFIELD. I will answer your question by asking you another. Why do you extend the large earnings of Manhattan over the Bronx, and reduce us so at Brooklyn?

Mr. CALDER. I would like to answer "yes" to Dr. Grandfield's question.

Mr. REDFIELD. I would like to answer "yes" to his statement, too.

Mr. CALDER. We are willing to stand or fall on the proposition that they extend the same treatment to the Bronx and Brooklyn.

Mr. REDFIELD. So am I. But what I do not hear you say is why, when you refuse to allow them to pay anything for that, you are not

only giving us poorer service than they have, but now you are cutting ours off 40 per cent.

Mr. GRANDFIELD. The fact remains that it costs the Post Office Department 12.73 per cent of the gross receipts to maintain that delivery service in the city of New York and 45.60 per cent to maintain it in the city of Brooklyn.

Mr. REDFIELD. Exactly. What does it cost in the Borough of the Bronx?

Mr. ALEXANDER. That is a part of New York, and you are not, for post-office purposes.

Mr. REDFIELD. That is just the point.

Mr. ALEXANDER. You are getting all you pay for, and more, too.

Mr. REDFIELD. We contribute enormously to the New York revenues.

Mr. ALEXANDER. That is purely speculative.

Mr. GRANDFIELD. I think it is speculative.

Mr. TOWNER. There would be no possible method of ascertaining to what extent that is true, would there?

Mr. GRANDFIELD. I think the department has adopted the proper method when it takes the actual number of pieces of mail delivered and the actual weight of the mail handled.

Mr. REDFIELD. You can not arbitrarily put the Bronx under New York, and cover up its deficiencies, and then point to alleged deficiencies on our part, and say that we must suffer for it, but the Bronx must not.

Mr. GRANDFIELD. If you consider that Brooklyn should be treated from a postal standpoint as a part of New York City, why perhaps that is a proper conclusion to draw; but as a matter of fact it is not a part of the postal district of New York City. It has a separate post office, and I do not believe that the department could apply such a principle in regulating the conduct of the office.

Mr. ALEXANDER. There seems to be a controversy here about a fact, and that is as to the service in the Bronx.

Mr. GRANDFIELD. I think the fair way is to compare Brooklyn with another city of like importance. Compare it with Philadelphia, St. Louis, or Chicago.

Mr. REDFIELD. Have you considered, in taking this action, the effect that the action might have upon property values?

Mr. GRANDFIELD. No; because we think that what we are doing is right, and I do not believe that we have any excuse for doing anything else than what we believe to be right.

Mr. REDFIELD. Therefore you think it is right—to take another example within my knowledge—to give to great sections, and closely built up sections, of the Borough of Brooklyn the same or a less delivery service than exists in cities like Springfield, Mass., or similar towns throughout the country?

Mr. GRANDFIELD. No; but I do think it is proper for us to give the city of Brooklyn the same sort of service we are giving to Philadelphia, Washington, Cincinnati, St. Louis, San Francisco, Chicago, and other commercial cities of like importance. I do not think it is a fair comparison to compare Brooklyn to New York, to compare Washington to New York, to compare Chicago to New York, or to compare any other city to New York. The only other city that can be compared to New York is the city of Boston proper—not the Boston postal district, but the down town district of Boston.

Mr. ALEXANDER. As a matter of equity have the business men in New York or in Brooklyn or in Boston any right to better mail facilities than the business men in St. Louis?

Mr. GRANDFIELD. I think not.

Mr. ALEXANDER. Or are they entitled to any more deliveries of mail a day?

Mr. GRANDFIELD. I think not.

Mr. ALEXANDER. And the people in the residential sections of the city, I do not care how thickly it is populated——

Mr. GRANDFIELD. But I believe this: That in the congested business area, such as there is in part of New York—in most of New York—part of Boston, part of St. Louis, and part of Chicago, it is economical to make frequent deliveries.

Mr. ALEXANDER. Yes.

Mr. GRANDFIELD. Seven or eight times a day.

Mr. ALEXANDER. Because the accumulation of the mail would become so great that it would not be practicable to handle it otherwise?

Mr. GRANDFIELD. You could not handle it otherwise.

Mr. ALEXANDER. But it is not because they are entitled to any more facilities?

Mr. GRANDFIELD. No.

Mr. ALEXANDER. But to keep it from becoming congested.

Mr. GRANDFIELD. Yes.

Mr. ALEXANDER. It is economical from the post-office standpoint.

Mr. REDFIELD. From your point of view, then, that post office should be run simply on the basis of its earning power?

Mr. GRANDFIELD. Not at all. I think the post office should be maintained solely for the benefit of the people, and that the question of earning power is a secondary consideration; but I think that, having established a standard, we should maintain it in all sections of the country. Whether it be in St. Louis, Brooklyn, or Chicago, the people are entitled to the same kind of service.

Mr. TOWNER. Is it not true that this order is only tentative in its nature, anyway?

Mr. GRANDFIELD. This order applies only to the purely residential sections of Brooklyn. We do not want to reduce the deliveries to business men, not a bit.

Mr. TOWNER. Is it not the intention of the department to make such adjustments as may be fair and reasonable?

Mr. GRANDFIELD. Unquestionably.

Mr. TOWNER (continuing). To these people in Brooklyn?

Mr. GRANDFIELD. Unquestionably.

Mr. TOWNER. And would there be any reason why the department would not answer these complaints if they were made to the department?

Mr. GRANDFIELD. No. We answer complaints promptly, and correct the things complained of whenever we can. The postmaster, as shown by Mr. Calder's correspondence, is doing the same thing. As fast as complaints come to his attention he corrects them, as far as it is in his power to do so.

Mr. CALDER. Doctor, you have heard all these complaints, and all our side of this story.

Mr. GRANDFIELD. Yes; I have.

Mr. CALDER. I would like you to go pretty thoroughly into this situation.

Mr. GRANDFIELD. I think most of the complaints of those business men—22, were there not—can be easily corrected.

Mr. REDFIELD. There were 100 names on one of them.

Mr. GRANDFIELD. I have no knowledge of any except the ones you put in the record.

Mr. REDFIELD. There was one with 100 names on it.

Mr. GRANDFIELD. That was a petition praying for the restoration of the service, without any designation being given and without making any specific complaint. They might have been business men or they might have been residents.

Mr. ALEXANDER. I understand the point to be that, these complaints having been brought to the attention of the department, through you, they will be remedied as far as possible?

Mr. GRANDFIELD. Certainly. I think it is evident, from what the postmaster says, that the plan we had in mind for facilitating the morning delivery by employing collectors at that time, has not been put fully in operation. Of course this is a new service, and you must remember that most of the changes were made in June and some of them as late as July.

Mr. REDFIELD. May the committee understand, Dr. Grandfield, that you will make a thorough study of the Brooklyn situation and advise it as to what you can do to restore the former conditions as far as possible?

Mr. GRANDFIELD. I do not think we can restore the former conditions. I do not think we can make five deliveries in purely residence territory in Brooklyn. I do not think the Postmaster General has authority to show such favoritism. I think if he makes five deliveries in the residential sections of Brooklyn he must make them in other cities. The majority of the other cities only get two. In this city the majority of the residents receive only two deliveries—in certain sections three. I do not think we can restore five deliveries in Brooklyn. I could not recommend it. I think business men should have five deliveries if they require it in their business; and we give it to them. But do you mean to ask the department to give every resident in Brooklyn—

Mr. REDFIELD. I ask the department to restore the service to where it stood on the 1st of June.

Mr. GRANDFIELD. That means to give—

Mr. REDFIELD. Subject to modifications in detail.

Mr. GRANDFIELD. That means to give every resident of Brooklyn five deliveries a day, practically.

Mr. CALDER. No; it does not.

Mr. GRANDFIELD. All but the residents on 29 carrier routes.

Mr. CALDER. When you had over 100, I think we did not have 5.

Mr. ALEXANDER. Is there any other testimony you desire to submit, gentlemen? If you desire, we will adjourn until to-morrow morning at 10 o'clock, and if there is anything else you wish to submit at that time you can do so.

(The committee thereupon adjourned until to-morrow, Friday, July 7, 1911, at 10 o'clock a. m.)

(The following documents, used by Mr. Grandfield in giving his testimony, were submitted to the committee:)

TABLE SHOWING CHANGES IN DELIVERY SERVICE OF THE BROOKLYN (N. Y.), POST OFFICE, RESULTING FROM THE REAPPORTIONING OF THE VARIOUS ROUTES.

General post office.—This district comprises an area of $3\frac{1}{2}$ square miles, with an estimated population of 204,280, formerly served by 130 delivery carriers, now served by 99 delivery carriers. There were originally 7 double, six-trip routes and 58 double five-trip routes. There are now 6 double six-trip routes and 27 double three-trip routes, the latter serving the residential districts. Throughout the residential part of the general office, however, are scattered large business concerns of various character, and in order to provide proper service to the business interests, it was deemed expedient to establish 2 distinct delivery routes in the delivery of mail to the concerns in question in order that it would not be necessary to provide a greater number of trips in the residential territory in which they are located. This delivery service is now performed by aged carriers who were formerly assigned to collection routes, and this mode of delivery appears to be satisfactory to those concerned.

Station A (14-16 Graham Avenue).—This district is comprised of a very large foreign population, mainly of the Jewish, Italian, Syrian, etc., nationalities. Scattered throughout this territory are also a large number of business concerns. The original number of routes at this station was 31 double five-trip routes, and the service is now performed through the medium of 8 double four-trip and 18 double three-trip routes, thereby saving 10 carriers, a reduction from 62 to 52 in the delivery service. The area of this station is $2\frac{1}{2}$ square miles and has a population of approximately 183,704.

Station B (1266-1268 Fulton Street).—The most important residential section in the borough. In one section, however, are located a number of the largest shoe manufacturing in the country. The district covers a class of people who largely patronize the monthly magazines and other periodicals, making it a very heavy second class matter district. Originally there were 30 double five and 2 double three-trip routes; there are now 25 double three, 3 double four, and 1 single three-trip route, the reorganization resulting in reducing the force from 64 to 57 carriers, a saving of 7 men. The area of this district is $2\frac{1}{2}$ square miles and the approximate population 88,640.

Station C (5121 Third Avenue).—A district bordering on New York Harbor and at present the scene of a remarkable industrial growth, superinduced to a large extent by the locating of the immense plant of the Bush Terminal Co. and several other large plants. The business interests are confined mainly to the water front. It was found that satisfactory service could be rendered by the establishment of four-trip routes rather than the five-trip schedule, which was in force when I assumed the incumbency of office; accordingly, they were reduced to four-trip routes. The remainder of this district is strictly residential, although many small business concerns are located on Third and Fifth Avenues, respectively. Therefore the original 13 double five-trip routes were reduced to three-trip (double) routes, making, in addition to the service already installed, 17 double three-trip routes and resulted in reducing the delivery force from 42 to 38 men, a saving of 4 delivery carriers. This station covers an area of $2\frac{1}{4}$ square miles and has an approximate population of 87,496.

Station D (1923 Fulton Street).—A strictly residential territory of the better class, having within its confines but two concerns of large size, together with a number of small stores, mainly located at the corners of the streets and avenues. The mail was formerly delivered through the medium of 21 double five-trip routes, 3 double three-trip, and 1 single three-trip route. In reorganizing this district, the area of which is $2\frac{1}{4}$ square miles and has an approximate population of 109,248, the work is being performed by 42 instead of 49 delivery carriers, a saving of 7 carriers.

Station E (2634 Atlantic Avenue).—All throughout this district, which is one of the farthest from the main office, may be found numerous concerns scattered throughout the territory, which is otherwise residential in character. There were originally 10 double four-trip routes, 11 double three-trip routes, 2 single three-trip routes, and 1 single two-trip route. The latter 2 were left intact, 3 combination collection and delivery routes installed, and the balance of the territory divided into 20 double three-trip routes, reducing the delivery force by 3 men. Thus 42 delivery carriers and collectors assigned to combination routes perform service in lieu of the 45 straight delivery routes formerly in force. The area of this station is $5\frac{1}{4}$ square miles and the approximate population is 109,088.

Flatbush Station (828-830 Flatbush Avenue).—The largest and best suburban district within the delivery of this office. There were originally 6 double five-trip routes and 14 double three-trip routes. In the reorganization of this station there

were 6 double four-trip routes, 10 double three-trip routes, and 4 combination collection and delivery routes placed in operation, thus saving 2 men. The four-trip routes installed at this station were not instituted for the business interests, for the reason that the same is confined to small stores, with few exceptions. The quantity of mail to be handled necessitated the arranging for the four-trip schedule. This station has an area of $4\frac{1}{2}$ square miles and a population approximating 50,764.

Station G (860 Manhattan Avenue).—In all parts of this station are located manufacturing concerns of considerable size and importance and it was a difficult matter to readjust the delivery territory so as to permit of proper service. There were originally 13 double five-trip routes and these were reduced to 7 double four-trip, 4 double three, and 1 single three-trip route, permitting a saving of three carriers and reducing the force from 26 to 23 men. The area of this station is $1\frac{1}{4}$ square miles and has an approximate population of 70,636.

Station J (Glendale).—Most of the district of this station is residential in character. In that part known as "Glendale," located within the county of Queens, there are a number of large concerns who from habit call for their mail daily; therefore it was possible to reduce the 7 double five-trip routes to double three-trip routes and save from the delivery force 4 men, reducing the original force from 32 to 28 carriers. The area of this station is 4 square miles and the approximate population 95,556.

Station L (Long Island Railroad Terminal).—A growing business district, due to the terminal of the subway and the business interests adjacent to the Gowanus Canal. One-half of the district, however, is high-class residential in character. This district was originally served by 20 double five-trip tours. The business district is now served by 4 double four-trip routes and the balance of the territory, which is residential, was redistricted to 12 double three-trip routes. This afforded a saving of 6 men, thus reducing the force from 40 to 34 delivery carriers. The area of this station is $1\frac{1}{4}$ square miles and the approximate population 73,464.

Station P (1731 Pitkin Avenue).—This station is peopled almost wholly by the Jewish population and there were originally 4 double five-trip, 3 double three-trip, and 8 single three-trip routes. This whole station was redistricted and delivery of mail is now effected by 13 single three and 4 double three-trip routes, saving 1 carrier and reducing the force from 22 to 21 men. The area of this station is 4 square miles and the approximate population 75,672.

Station S (1262-1264 Broadway).—The station having the greatest population in the borough. One-half of the territory is located east of Broadway and is a very high-class residential section, while that part west of Broadway is peopled by a thrifty German population, residing mainly in six and eight family double flats. Originally 5 trips were made over the entire section, requiring 76 carriers to perform service on 38 double five-trip routes. Broadway, which is the main artery of the eastern district of the borough, is solidly housed on both sides of the thoroughfare with large and small stores. To provide what was deemed proper service, 5 double four-trip routes were installed to the territory along this thoroughfare and the streets adjacent thereto. The balance of the station was redistricted into 27 double three-trip routes, reducing the force by 12 men, or from 76 to 64 carriers. The area of this station is 2 $\frac{1}{4}$ square miles and the population 153,908.

Station T (170-172 Hamilton Avenue).—This station is bounded on the east by the Gowanus Canal and on the south and west by New York Bay, and along the water front many vast interests are located. The north side of the territory is residential in character. Most of it was originally of fair grade, but at the present time it is deteriorating. The center of the station is comprised of filled-in marsh land covered with dwellings of a lower grade, which are scattered throughout this territory. Thirteen double five-trip routes were originally assigned to this station, and the business is now served by 9 double four-trip routes and the residential section by 3 single three-trip routes, saving 5 men and reducing the force from 26 to 21 delivery carriers. The area of this station is $1\frac{1}{2}$ square miles and the approximate population 73,684.

Station V (299-301 Ninth Street).—Three-quarters of this station district is comprised of a very high-class residential and apartment section. That part of the district located on Gowanus Canal and New York Bay is devoted to large business interests. There were originally 22 double five-trip and 1 double three-trip routes at this station. There are now 12 four-trip double and 8 three-trip double routes installed, reducing the number of men from 46 to 40, thereby saving 6 carriers. The area of this station is $2\frac{1}{4}$ square miles and the approximate population 100,544.

Station W (220-222 South Eighth Street).—The greatest manufacturing district within the borough and the industries represented are of a varied nature, most of them located along the East River water front, but also scattered throughout the entire district. It was a difficult matter to readjust the delivery territory so as to give proper service, and in the main the business interests appear to be well satisfied. Originally

28 double five-trip routes were in vogue. At present there are 11 four-trip (double) and 14 double three-trip routes, reducing the service by 6 men, or from 56 to 50. In this section and in fact most of the sections in which are located large business concerns, the management have invariably requested the carriers to leave the mail routed for delivery on the last trip on former five-trip schedule at the station for the reason that the carrier leaving at 5.30 p. m. usually arrived at the place of business of the concerns in question too late to be of service on that day and the fifth trip formerly in vogue only effected delivery to a large foreign tenement population. Therefore, notwithstanding that the trips have been reduced from five to four, very few complaints have been received at this office. The area of this station is 2½ square miles, and the approximate population 119,000.

The delivery service at stations Bath Beach (1846 Bath Avenue), Blythebourne (Thirteenth Avenue and Fifty-fifth Street), Coney Island (Surf Avenue, nearly opposite end of West Seventeenth Street), Fort Hamilton (9108 Fifth Avenue), Sheepshead Bay (1780 Sheepshead Bay Road), Vanderveer (1570-1574 Flatbush Avenue), and Station Y (1070 Gravesend Avenue) is now established upon a three-trip schedule, with the exception that at Vanderveer Station 2 routes receive but 2 deliveries daily. This service is acceptable to the residents within these districts, and the number of complaints has very greatly diminished.

The schedule of carriers' leaving time from stations on the various trips, which is contingent upon the arrival of the local railway post-office service, is as follows:

Two-trip routes, 7 a. m. and 3.30 p. m.

Three-trip routes, 7 a. m.; 1.45 p. m. and 4 p. m.; also 7 a. m.; 12 m. and 4 p. m.

Four-trip routes, 7 a. m.; 10.15 a. m.; 1.45 p. m. and 4 p. m.

Six-trip routes, 7.30 a. m.; 9.30 a. m.; 11.30 a. m.; 1.30 p. m.; 3 p. m. and 4.30 p. m.

The former five-trip schedule was as follows: 7 a. m.; 10 a. m.; 12 m.; 3 p. m. and 5 p. m.

Respectfully submitted.

(Signed)

E. W. VOORHIES, *Postmaster.*

JULY 4, 1911.

[Face.]

POST OFFICE, BROOKLYN; STATE, NEW YORK.

INFORMATION REGARDING CITY DELIVERY SERVICE, 1911.

[To be filled in by department.]

Gross receipts fiscal year ended June 30, 1911, \$——.

Cost of City Delivery Service fiscal year ended June 30, 1911, \$——.

Percentage of cost of City Delivery Service fiscal year 1910, 45.60.

[Postmasters will answer the following questions.]

GENERAL.

1. Total number of letter carriers, 1,035.
 - (a) Number of mounted carriers, 2.
 - (b) Number of carriers engaged exclusively in collecting, 180.
2. Estimated number of square miles served by carriers, 62½.
3. Estimated population served by carriers, 1,737,520.
4. Average number of persons served per carrier, 1,679.
5. Average number of places of delivery per carrier, 536.
6. Number of street letter boxes in use, 2,360, and 33 chutes.
7. Number of package boxes in use, 492.
8. Number of combination letter and package boxes in use, 49.
9. Percentage of residences provided with mail receptacles, 24 ⅓.
10. Percentage of business places provided with mail receptacles, 7 ⅓.

DELIVERIES AND COLLECTIONS.

11. Total average daily time of carriers (including collectors), 7.55.
12. Number of pieces of mail of all classes routed per minute per carrier on Wednesday, March 8, 1911, 9.
 - (a) Number of pieces of first-class mail routed per minute per carrier on Wednesday, March 8, 1911, 10.
13. Average distance traveled daily by carriers engaged exclusively in making collections—on foot, 12½.
 - (a) Average distance traveled daily by carriers engaged exclusively in making collections—mounted, 19.

[Back.]

14. Statement showing daily averages for the work described below during the six days, March 6 to 11, 1911, inclusive.

For carriers making—	Average daily office time per carrier.	Average weight in pounds of mail delivered daily per carrier.		Average number pieces of mail delivered daily per carrier.		Average number mail receptacles per route.	Average number stops made daily per carrier.	Average number miles traveled daily.	
		First class only.	All classes.	First class only.	All classes.			Foot men.	Mounted men.
1 trip.....									
2 trips.....	1.48	7	24	427	655	137	270	10	
3 trips.....	1.56	10	33	508	627	337	353	8	
4 trips.....	2.17	14	36	582	744	268	343	7	
5 trips.....	2.21	17	44	729	894	368	441	6½	
6 trips.....	3.21	44	81	1,654	1,859	197	324	3½	
7 trips.....									
8 trips.....									
Average for all carriers who make deliveries, regardless of number of trips.....	2.20	16	42	686	840	352	414	6½	

15. Statement showing the number of deliveries and collections scheduled to be made and the character of the territory served.

Number of delivery routes scheduled for trips as follows—				Number of letter boxes scheduled for collections as follows—			
Trips.	Business.	Residence.	Mixed business and residence.	Collections.	Business.	Residence.	Mixed business and residence.
1.....				1.....			
2.....		4		2.....			
3.....		115	11	3.....			
4.....	1	10		4.....			
5.....	25	141	138	5.....		28	
6.....	7			6.....		76	
7.....				7.....		162	134
8.....				8.....		191	
				9.....		116	292
				10.....	119	664	607
				11.....			
				12, etc.....			

Residence territory should include sections containing mainly dwellings, but throughout which are scattered groceries, drug stores, and small business concerns.

Mixed business and residence territory refers to sections containing a considerable number of business places whose mail is important and forms a relatively large proportion of the whole amount.

I certify the foregoing information is correct.

(Sgd.) E. W. VOORHIES, *Postmaster.*

—, 1911.

[Face.]

POST OFFICE, NEW YORK; STATE, NEW YORK.**INFORMATION REGARDING CITY DELIVERY SERVICE, 1911.**

[To be filled in by department.]

Gross receipts fiscal year ended June 30, 1911, \$——.

Cost of City Delivery Service fiscal year ended June 30, 1911, \$——.

Percentage of cost of City Delivery Service fiscal year 1910, 12.72.

[Postmasters will answer the following questions.]

GENERAL.

1. Total number of letter carriers, 2,538.
 - (a) Number of mounted carriers, 49.
 - (b) Number of carriers engaged exclusively in collecting, 371.
2. Estimated number of square miles served by carriers, 64.63.
3. Estimated population served by carriers, 5,997,990.
4. Average number of persons served per carrier, 2,363.
5. Average number of places of delivery per carrier, 306.
6. Number of street letter boxes in use, 3,666.¹
7. Number of package boxes in use, 611.
8. Number of combination letter and package boxes in use, ——.
9. Percentage of residences provided with mail receptacles, 0.47.
10. Percentage of business places provided with mail receptacles, 0.38.

DELIVERIES AND COLLECTIONS.

11. Total average daily time of carriers (including collectors), 7.57.
12. Number of pieces of mail of all classes routed per minute per carrier on Wednesday, March 8, 1911, 12.
 - (a) Number of pieces of first-class mail routed per minute per carrier on Wednesday, March 8, 1911, 14.
13. Average distance traveled daily by carriers engaged exclusively in making collections—on foot, 10.40,
 - (a) Average distance traveled daily by carriers engaged exclusively in making collections—mounted, 16.26.

¹ This number includes 609 chute boxes.

[Back.]

14. Statement showing daily averages for the work described below, during the six days, March 6 to 11, 1911, inclusive.

For carriers making—	Average daily office time per carrier.	Average weight in pounds of mail delivered daily per carrier.		Average number pieces of mail delivered daily per carrier.		Average number mail receptacles per route.	Average number stops made daily per carrier.	Average number miles traveled daily.	
		First class only.	All classes.	First class only.	All classes.			Foot men.	Mounted men.
1 trip.....	4.30	22	42	790	881	99	100	1.33	.....
2 trips.....	1.49	23	63	723	922	95	171	8.12	25
3 trips.....	2.55	24	65	969	1,209	651	314	8.42	37
4 trips.....	3.22	51	92	1,903	2,289	231	382	7.72	.....
5 trips.....	3.46	48	125	1,939	2,248	367	367	8.50	.....
6 trips.....									
7 trips.....									
8 trips.....									
Average for all carriers who make deliveries, regardless of number of trips.....	2.56	28	60	1,131	1,372	360	318	8.71	26.75

15. Statement showing the number of deliveries and collections scheduled to be made and the character of the territory served.

Number of delivery routes scheduled for trips as follows—				Number of letter boxes scheduled for collections as follows—			
Trips.	Business.	Residence.	Mixed business and residence.	Collections.	Business.	Residence.	Mixed business and residence.
1.....				1.....		20	7
2.....		11	1	2.....		26	.....
3.....	2	18	12	3.....		30	66
4.....		28	12	4.....		75	1
5.....		24	33	5.....		14	5
6.....		13	112	6.....		21	5
7.....	34	25	76	7.....		179	53
8.....	118	43	171	8.....			
9.....	18	2	4	9.....			
				10.....			
				11.....			11
				12, etc.....			187
				14.....			65
				15.....			159
				16.....	10	307	1,162
				17.....	14		
				18.....			25
				19.....	96		
				21.....		33	
				24.....	77	3	148
				27.....	120		40
				28.....	293	73	245
				30.....	90		6

Residence territory should include sections containing mainly dwellings, but throughout which are scattered groceries, drug stores, and small business concerns.

Mixed business and residence territory refers to sections containing a considerable number of business places whose mail is important and forms a relatively large proportion of the whole amount.

I certify the foregoing information is correct.

(Signed) E. M. MORGAN, Postmaster.

APRIL 3, 1911.

[Face.]

POST OFFICE, PHILADELPHIA; STATE, PENNSYLVANIA.

INFORMATION REGARDING CITY DELIVERY SERVICE, 1911.

[To be filled in by department.]

Gross receipts fiscal year ended June 30, 1911, \$——.

Cost of City Delivery Service fiscal year ended June 30, 1911, \$——.

Percentage of cost of City Delivery Service fiscal year 1910, 21.13.

[Postmasters will answer the following questions.]

GENERAL.

1. Total number of letter carriers, 1,206.
 - (a) Number of mounted carriers, 24.
 - (b) Number of carriers engaged exclusively in collecting, 119.
2. Estimated number of square miles served by carriers, 131.824.
3. Estimated population served by carriers, 1,958,245.
4. Average number of persons served per carrier, 1,624.
5. Average number of places of delivery per carrier, 378.
6. Number of street letter boxes in use (including 87 chutes), 4,152.
7. Number of package boxes in use, 564.
8. Number of combination letter and package boxes in use, 27.
9. Percentage of residences provided with mail receptacles, 18.
10. Percentage of business places provided with mail receptacles, 41.

DELIVERIES AND COLLECTIONS.

11. Total average daily time of carriers (including collectors), 7.52.
12. Number of pieces of mail of all classes routed per minute per carrier on Wednesday, March 8, 1911, 9.43.
 - (a) Number of pieces of first-class mail routed per minute per carrier on Wednesday, March 8, 1911, 12.50.
13. Average distance traveled daily by carriers engaged exclusively in making collections—on foot, 20.26.
 - (a) Average distance traveled daily by carriers engaged exclusively in making collections—mounted, 39.45.

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14. Statement showing daily averages for the work described below during the six days, March 6 to 11, 1911, inclusive.

For carriers making—	Average daily office time per carrier.	Average weight in pounds of mail delivered daily per carrier.		Average number pieces of mail delivered daily per carrier.		Average number mail receptacles per route.	Average number stops made daily per carrier.	Average number miles traveled daily.	
		First class only.	All classes.	First class only.	All classes.			Foot men.	Mounted men.
1 trip.....	1.18	6.11	27.04	328	452	35	177	18	25.8
2 trips.....	2.02	12.08	47.04	629	845	84	314	12.89	27.1
3 trips.....	2.13	4.00	52.07	781	1,023	73	902	13.76	.....
4 trips.....	2.21	16.03	51.03	863	1,067	69	414	13	.....
5 trips.....	2.49	30.00	25.00	1,457	1,566	38	312	14.73	.....
6 trips.....	3.25	35.13	41.08	1,794	2,086	141	291	11.33	.....
7 trips.....	3.12	67.00	107.11	2,826	3,227	464	591	7.86	.....
8 trips.....									
Average for all carriers who make deliveries, regardless of number of trips.....	2.27	18.14	48.06	975	1,209	86	403	12.7	25.93

15. Statement showing the number of deliveries and collections scheduled to be made and the character of the territory served.

Number of delivery routes scheduled for trips as follows—				Number of letter boxes scheduled for collections as follows—			
Trips.	Business.	Residence.	Mixed business and residence.	Collections.	Business.	Residence.	Mixed business and residence.
1.....		24	6	1.....		54	13
2.....		109	40	2.....		380	109
3.....		52	24	3.....		167	11
4.....	10	217	301	4.....		75	51
5.....	4		7	5.....	40	127	41
6.....	98	2	82	6.....		161	61
7.....	7			7.....		123	148
8.....				8.....	40	607	550
				9.....		89	301
				10.....			
				11.....	24	101	18
				12, etc.....	41	71	73
				13.....		31	144
				14.....	3		
				15.....	3		1
				16.....	6		9
				17.....	23		3
				18.....	12		
				19.....	18		15
				20.....	240		195
				21.....	3		
				22.....	1		
				23.....	13		
				24.....			

Residence territory should include sections containing mainly dwellings, but throughout which are scattered groceries, drug stores, and small business concerns.

Mixed business and residence territory refers to sections containing a considerable number of business places whose mail is important and forms a relatively large proportion of the whole amount.

I certify the foregoing information is correct.
_____, Postmaster.

—, 1911.

These figures include 87 chutes and 27 combination boxes.

[Face.]

POST OFFICE, ST. LOUIS; STATE, MISSOURI.

INFORMATION REGARDING CITY DELIVERY SERVICE, 1911.

[To be filled in by department.]

Gross receipts fiscal year ended June 30, 1911, \$——.

Cost of City Delivery Service fiscal year ended June 30, 1911, \$——.

Percentage of cost of City Delivery Service fiscal year 1910, 17.79.

[Postmasters will answer the following questions.]

GENERAL.

1. Total number of letter carriers, 641.
 - (a) Number of mounted carriers—2 delivery, 74 collection—76.
 - (b) Number of carriers engaged exclusively in collecting, 123.
2. Estimated number of square miles served by carriers, 75½.
3. Estimated population served by carriers, 722,000.
4. Average number of persons served per carrier, 1,126.
5. Average number of places of delivery per carrier, 425.
6. Number of street letter boxes in use (including 66 chute boxes), 1,995.
7. Number of package boxes in use, 281.
8. Number of combination letter and package boxes in use, 316.
9. Percentage of residences provided with mail receptacles, 10.
10. Percentage of business places provided with mail receptacles, 19.

DELIVERIES AND COLLECTIONS.

11. Total average daily time of carriers (including collectors), 7.51½.
12. Number of pieces of mail of all classes routed per minute per carrier on Wednesday, March 8, 1911, 8.81.
 - (a) Number of pieces of first-class mail routed per minute per carrier on Wednesday, March 8, 1911, 11.10.
13. Average distance traveled daily by carriers engaged exclusively in making collections—on foot, 14.00.
 - (a) Average distance traveled daily by carriers engaged exclusively in making collections—mounted, 21.05.

[Back.]

14. Statement showing daily averages for the work described below during the six days March 6 to 11, 1911 inclusive.

For carriers making—	Average daily office time per carrier.	Average weight in pounds of mail delivered daily per carrier.		Average number pieces of mail delivered daily per carrier.		Average number mail receptacles per route.	Average number stops made daily per carrier.	Average number miles traveled daily.	
		First class only.	All classes.	First class only.	All classes.			Foot men.	Mounted men.
1 trip.....	1.00	6.00	42.00	243	367	58	130	12.00	.....
2 trips.....	1.31	9.50	55.00	406	536	74	233	11.8	22.92
3 trips.....	1.53	12.40	60.00	535	702	47	313	10.2	.....
4 trips.....	2.02	18.70	51.00	802	1,028	14	237	10.8	.....
5 trips.....	2.27	34.00	76.25	1,591	1,760	21	261	10.00	.....
6 trips.....	2.55	60.75	115.00	24.65	2,660	66	317	7.6	.....
7 trips.....									
8 trips.....									
Average for all carriers who make deliveries, regardless of number of trips.....	2.02	20.25	61.30	8.50	10.31	48	296	10.08	22.92

15. Statement showing the number of deliveries and collections scheduled to be made and the character of the territory served.

Number of delivery routes scheduled for trips as follows—				Number of letter boxes scheduled for collections as follows—			
Trips.	Business.	Residence.	Mixed business and residence.	Collections.	Business.	Residence.	Mixed business and residence.
1.....		2		1.....		12	
2.....		49		2.....		100	
3.....		332		3.....		93	
4.....			38	4.....		10	
5.....	26			5.....		22	
6.....	71			6.....		14	
7.....				7.....		1,654	243
8.....				8.....			28
				9.....			7
				10.....	7		17
				11.....	6		1
				12.....	8		7
				13.....	46		
				14.....	7		
				15.....	28		
				16.....	55		
				17.....	2		
				18.....	18		
				19.....	22		
				20.....	65		
				21.....	15		
				22.....	10		
				23.....	14		
				24.....	52		
				25.....	6		
				26.....	7		
				27.....	6		

Residence territory should include sections containing mainly dwellings, but throughout which are scattered groceries, drug stores, and small business concerns.

Mixed business and residence territory refers to sections containing a considerable number of business places whose mail is important and forms a relatively large proportion of the whole amount.

I certify the foregoing information is correct.

—, 1911. —, Postmaster.

[Face.]

POST OFFICE, PITTSBURG; STATE, PENNSYLVANIA.

INFORMATION REGARDING CITY DELIVERY SERVICE, 1911.

[To be filled in by department.]

Gross receipts fiscal year ended June 30, 1911, \$——.

Cost of City Delivery Service fiscal year ended June 30, 1911, \$——.

Percentage of cost of City Delivery Service fiscal year 1910, 18.97.

[Postmasters will answer the following questions.]

GENERAL.

1. Total number of letter carriers, 505.
 - (a) Number of mounted carriers, 17.
 - (b) Number of carriers engaged exclusively in collecting, 31.
2. Estimated number of square miles served by carriers, 60.277.
3. Estimated population served by carriers, 637,064.
4. Average number of persons served per carrier, 1,261.
5. Average number of places of delivery per carrier, 309.
6. Number of street letter boxes in use, 1,548.
7. Number of package boxes in use, 38.
8. Number of combination letter and package boxes in use, 214.
9. Percentage of residences provided with mail receptacles, 9.
10. Percentage of business places provided with mail receptacles, 39.

DELIVERIES AND COLLECTIONS.

11. Total average daily time of carriers (including collectors), 7.56.
12. Number of pieces of mail of all classes routed per minute per carrier on Wednesday, March 8, 1911, 9.
 - (a) Number of pieces of first-class mail routed per minute per carrier on Wednesday, March 8, 1911, 11.
13. Average distance traveled daily by carriers engaged exclusively in making collections—on foot, 14.09
 - (a) Average distance traveled daily by carriers engaged exclusively in making collections—mounted 14.6.

[Back.]

14. Statement showing daily averages for the work described below during the six days, March 6 to 11, 1911, inclusive.

For carriers making—	Average daily office time per carrier.	Average weight in pounds of mail delivered daily per carrier.		Average number pieces of mail delivered daily per carrier.		Average number mail receptacles per route.	Average number stops made daily per carrier.	Average number miles traveled daily.	
		First class only.	All classes.	First class only.	All classes.			Footmen.	Mounted men.
1 trip.....	1. 15	3. 8	47	168	292	254	160		
2 trips.....	1. 32	6	42	298	474	24	274	12. 5	17. 5
3 trips.....	1. 46	8. 5	50	420	631	32	313	16. 3	16. 3
4 trips.....	2. 03	13	52	542	818	34	324	16. 2	16. 9
5 trips.....	2. 35	23. 4	75	1, 015	1, 265	14	325	19. 2	16. 1
6 trips.....	1. 30	33	50	685	788	41	41		13. 5
7 trips.....									
8 trips.....									
Average for all carriers who make deliveries, regardless of number of trips...	1. 47	14. 73	53	521	711	6	243	16. 4	13. 9

15. Statement showing the number of deliveries and collections scheduled to be made and the character of the territory served.

Number of delivery routes scheduled for trips as follows—				Number of letter boxes scheduled for collections as follows—			
Trips.	Business.	Residence.	Mixed business and residence.	Collections.	Business.	Residence.	Mixed business and residence.
1.....		1		1.....		1	
2.....		110	2	2.....		456	
3.....		133	74	3.....	3	260	28
4.....	10		36	4.....	14	223	67
5.....	96		5	5.....	23	126	71
6.....	1			6.....	24	57	37
7.....				7.....	25	23	29
8.....				8.....	39	8	18
				9.....	43	4	18
				10.....	27		9
				11.....	24		6
				12.....	2		1
				13.....	6		3
				14.....	8		1
				15.....	19		3
				16.....	19		1
				17.....	23		1
				18.....	5		
				19.....	15		
				20.....	10		
				21.....	6		
				22.....	3		
				23.....	8		
				24.....	2		
				25.....	1		

Residence territory should include sections containing mainly dwellings, but throughout which are scattered groceries, drug stores, and small business concerns.

Mixed business and residence territory refers to sections containing a considerable number of business places whose mail is important and forms a relatively large proportion of the whole amount.

I certify the foregoing information is correct.

_____, Postmaster.

_____, 1911.

[Face.]

POST OFFICE, BALTIMORE; STATE, MARYLAND.

INFORMATION REGARDING CITY DELIVERY SERVICE, 1911.

[To be filled in by department.]

Gross receipts fiscal year ended June 30, 1911, \$——.

Cost of City Delivery Service fiscal year ended June 30, 1911, \$——.

Percentage of cost of City Delivery Service fiscal year 1910, 23.21.

[Postmasters will answer the following questions.]

GENERAL.

1. Total number of letter carriers, 412.
 - (a) Number of mounted carriers, 40.
 - (b) Number of carriers engaged exclusively in collecting, 45.
2. Estimated number of square miles served by carriers, 55.
3. Estimated population served by carriers, 647,065.
4. Average number of persons served per carrier, 1,570.
5. Average number of places of delivery per carrier, 418.
6. Number of street letter boxes in use, 925.
7. Number of package boxes in use, 178.
8. Number of combination letter and package boxes in use, 224.
9. Percentage of residences provided with mail receptacles, 3.
10. Percentage of business places provided with mail receptacles, 13½.

DELIVERIES AND COLLECTIONS.

11. Total average daily time of carriers (including collectors), 7.59.
12. Number of pieces of mail of all classes routed per minute per carrier on Wednesday, March 8, 1911, 11.51.
 - (a) Number of pieces of first-class mail routed per minute per carrier on Wednesday, March 8, 1911, 13.84.
13. Average distance traveled daily by carriers engaged exclusively in making collections—on foot, 14.52.
 - (a) Average distance traveled daily by carriers engaged exclusively in making collections—mounted, 15.04.

[Back.]

14. Statement showing daily averages for the work described below during the six days, March 6 to 11, 1911, inclusive.

For carriers making—	Average daily office time per carrier.	Average weight in pounds of mail delivered daily per carrier.		Average number pieces of mail delivered daily per carrier.		Average number mail receptacles per route.	Average number stops made daily per carrier.	Average number miles traveled daily.	
		First class only.	All classes.	First class only.	All classes.			Foot men.	Mounted men.
1 trip.....									
2 trips.....	1.37	11.29	37	409	529	62	171	11.8	18.9
3 trips.....	2.27	13.13	41	539	707	23	198	11.5	16.3
4 trips.....	2.48	19.8	59	859	1,068	21	265	10.2	
5 trips.....	3.17	37.35	78	1,440	1,635	59	243	11.6	
6 trips.....									
7 trips.....									
8 trips.....									
Average for all carriers who make deliveries, regardless of number of trips.....	2.29	16.9	47	675	842	33	204	11.5	185

15. Statement showing the number of deliveries and collections scheduled to be made and the character of the territory served.

Number of delivery routes scheduled for trips, as follows—				Number of letter boxes scheduled for collections, as follows—			
Trips.	Business.	Residence.	Mixed business and residence.	Collections.	Business.	Residence.	Mixed business and residence.
1.....				1.....			
2.....		23		2.....		38	
3.....		217		3.....		40	
4.....	2	20	2	4.....		53	
5.....	7		2	5.....	1	60	
6.....				6.....		64	
7.....	57			7.....	1	179	
8.....				8.....	3	230	2
9.....	1			9.....	2	179	18
				10.....	2	44	46
				11.....		4	2
				12.....	1	2	3
				13.....	4	2	1
				14.....	18	4	2
				15.....	94	4	2
				16.....	27	1	3
				17.....	26	1	
				18.....	6	1	1
				19.....	3	3	
				22.....		2	
				23.....	1	1	
				24.....	1		
				25.....	1		
				27.....		1	

Residence territory should include sections containing mainly dwellings, but throughout which are scattered groceries, drug stores, and small business concerns.

Mixed business and residence territory refers to sections containing a considerable number of business places whose mail is important and forms a relatively large proportion of the whole amount.

I certify the foregoing information is correct.

_____, Postmaster.

—, 1911.

[Face.]

POST OFFICE, CINCINNATI; STATE, OHIO.

INFORMATION REGARDING CITY DELIVERY SERVICE, 1911.

(To be filled in by department.)

Gross receipts fiscal year ended June 30, 1911, \$——.

Cost of City Delivery Service fiscal year ended June 30, 1911, \$——.

Percentage of cost of City Delivery Service fiscal year 1910, 16.45.

[Postmasters will answer the following questions.]

GENERAL.

1. Total number of letter carriers, 329.
 - (a) Number of mounted carriers, 31.
 - (b) Number of carriers engaged exclusively in collecting, 28.
2. Estimated number of square miles served by carriers, 57.19.
3. Estimated population served by carriers, 418,297.
4. Average number of persons served per carrier, 1,271.
5. Average number of places of delivery per carrier, 333.
6. Number of street letter boxes in use, 783.
7. Number of package boxes in use, 27.
8. Number of combination letter and package boxes in use, 262.
9. Percentage of residences provided with mail receptacles, 43.
10. Percentage of business places provided with mail receptacles, 14.

DELIVERIES AND COLLECTIONS.

11. Total average daily time of carriers (including collectors), 7.46.
12. Number of pieces of mail of all classes routed per minute per carrier on Wednesday, March 8, 1911, 9.34.
 - (a) Number of pieces of first-class mail routed per minute per carrier on Wednesday, March 8, 1911, 17.59.
13. Average distance traveled daily by carriers engaged exclusively in making collections—on foot, 0.
 - (a) Average distance traveled daily by carriers engaged exclusively in making collections—mounted, 19.3.

[Back.]

14. Statement showing daily averages for the work described below, during the six days, March 6 to 11, 1911, inclusive.

For carriers making—	Average daily office time per carrier.	Average weight in pounds of mail delivered daily per carrier.		Average number pieces of mail delivered daily per carrier.		Average number mail receptacles per route.	Average number stops made daily per carrier.	Average number miles traveled daily.	
		First class only.	All classes.	First class only.	All classes.			Foot men.	Mounted men.
1 trip.....									
2 trips.....	1.20	6.9	51	334	501	124	258	15.7	20.11
3 trips.....	1.36	9.8	57	486	663	146	296	13.17	
4 trips.....	1.38	12	44	593	763	241	259	13.14	
5 trips.....	2.00	18.6	58	885	1,075	83	250	13.13	
6 trips.....	2.11	33	80	1,440	1,673	32	310	10.87	
7 trips.....									
8 trips.....									
Average for all carriers who make deliveries, regardless of number of trips.....	1.39	14.25	57	664	847	132	274	13.66	20.11

15. Statement showing the number of deliveries and collections scheduled to be made and the character of the territory served.

Number of delivery routes scheduled for trips as follows—				Number of letter boxes scheduled for collections as follows—			
Trips.	Business.	Residence.	Mixed business and residence.	Collections.	Business.	Residence.	Mixed business and residence.
1.....				1.....			
2.....		115	1	2.....		216	
3.....		35	6	3.....		170	6
4.....		20	47	4.....		140	20
5.....	5		12	5.....	1	32	11
6.....	47		13	6.....		25	34
7.....				7.....	4	30	29
8.....				8.....	1	35	59
				9.....	1	12	24
				10.....	6	4	14
				11.....	10	1	10
				12.....	16		4
				13.....	17		11
				14.....	46		42
				15.....	9		
				16.....	11		
				17.....	10		
				18.....	7		
				19.....	1		
				20.....	2		
				21.....	1		

Residence territory should include sections containing mainly dwellings, but throughout which are scattered groceries, drug stores, and small business concerns.

Mixed business and residence territory refers to sections containing a considerable number of business places whose mail is important and forms a relatively large proportion of the whole amount.

I certify the foregoing information is correct.

_____, Postmaster.

—, 1911.

[Face.]

POST OFFICE, CHICAGO; STATE, ILLINOIS.

INFORMATION REGARDING CITY DELIVERY SERVICE, 1911.

(To be filled in by department.)

Gross receipts fiscal year ended June 30, 1911, \$——.

Cost of City Delivery Service fiscal year ended June 30, 1911, \$——.

Percentage of cost of City Delivery Service fiscal year 1910, 12.50.

[Postmasters will answer the following questions.]

GENERAL.

1. Total number of letter carriers, 1,907.
 - (a) Number of mounted carriers, 16.
 - (b) Number of carriers engaged exclusively in collecting, 338.
2. Estimated number of square miles served by carriers, 191.36.
3. Estimated population served by carriers, 2,596,141.
4. Average number of persons served per carrier, 1,361.
5. Average number of places of delivery per carrier, 382.
6. Number of street letter boxes in use, 4,838.
7. Number of package boxes in use, 1,018.
8. Number of combination letter and package boxes in use, 47.
9. Percentage of residences provided with mail receptacles, 38.
10. Percentage of business places provided with mail receptacles, 17.

DELIVERIES AND COLLECTIONS.

11. Total average daily time of carriers (including collectors), 7.52.
12. Number of pieces of mail of all classes routed per minute per carrier on Wednesday, March 8, 1911, 11.
 - (a) Number of pieces of first-class mail routed per minute per carrier on Wednesday, March 8, 1911, 15.
13. Average distance traveled daily by carriers engaged exclusively in making collections—on foot, 13.
 - (a) Average distance traveled daily by carriers engaged exclusively in making collections—mounted, 23.

[Back.]

14. Statement showing daily averages for the work described below, during the six days, March 6 to 11, 1911 inclusive.

For carriers making—	Average daily office time per carrier.	Average weight in pounds of mail delivered daily per carrier.		Average number pieces of mail delivered daily per carrier.		Average number mail receptacles per route.	Average number stops made daily per carrier.	Average number miles traveled daily.	
		First class only.	All classes.	First class only.	All classes.			Foot men.	Mounted men.
1 trip.....	30	5	24	108	175	11	127	.....	25
2 trips.....	1.29	11	47	412	614	121	277	14.6	20.4
3 trips.....	1.48	15	57	645	878	186	350	12.8	19.8
4 trips.....	2.07	29	63	1,218	1,462	98	298	12.5	20.25
5 trips.....	2.07	39	77	2,513	2,735	53	229	14	.....
6 trips.....	3.07	91	136	2,348	4,103	71	208	11	.....
7 trips.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
8 trips.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Average for all carriers who make deliveries, regardless of number of trips.....	2.06	33	75	1,446	1,681	142	308	12.6	20.56

15. Statement showing the number of deliveries and collections scheduled to be made and the character of the territory served.

Number of delivery routes scheduled for trips as follows—				Number of letter boxes scheduled for collections as follows—			
Trips.	Business.	Residence.	Mixed business and residence.	Collections.	Business.	Residence.	Mixed business and residence.
1.....	1	.....	1.....	.....	6	.....
2.....	1	125	28	2.....	.....	80	.....
3.....	2	657	234	3.....	1	153	.....
4.....	29	5	77	4.....	.....	120	.....
5.....	39	.....	22	5.....	2	119	3
6.....	342	.....	7	6.....	9	367	4
7.....	7.....	14	829	28
8.....	8.....	9	214	13
.....	9.....	11	138	13
.....	10.....	26	134	46
.....	11.....	9	223	25
.....	12.....	89	1,105	283
.....	13.....	48	.....	17
.....	14.....	4	.....	30
.....	15.....	.....	.....	.....
.....	16.....	2	.....	.....
.....	17.....	4	.....	.....
.....	18.....	20	.....	.....
.....	19.....	6	.....	.....
.....	20.....	188	2	3
.....	21.....	18	.....	.....
.....	22.....	4	.....	.....
.....	23.....	17	.....	.....
.....	24.....	30	.....	.....
.....	25.....	33	.....	.....
.....	26.....	177	.....	.....
.....	27.....	188	.....	.....
.....	28.....	21	.....	.....

Residence territory should include sections containing mainly dwellings, but throughout which are scattered groceries, drug stores, and small business concerns.

Mixed business and residence territory refers to sections containing a considerable number of business places whose mail is important and forms a relatively large proportion of the whole amount.

I certify the foregoing information is correct.

(Sgd.) D. A. CAMPBELL, Postmaster.

MARCH 27, 1911.

[Face.]

POST OFFICE, BOSTON; STATE, MASSACHUSETTS.

INFORMATION REGARDING CITY DELIVERY SERVICE, 1911.

[To be filled in by department.]

Gross receipts fiscal year ended June 30, 1911, \$——.

Cost of City Delivery Service fiscal year ended June 30, 1911, \$——.

Percentage of cost of City Delivery Service fiscal year 1910, ——.

[Postmasters will answer the following questions.]

GENERAL.

1. Total number of letter carriers, 1,271.
 - (a) Number of mounted carriers, 28.
 - (b) Number of carriers engaged exclusively in collecting, 187.
2. Estimated number of square miles served by carriers, 174½.
3. Estimated population served by carriers, 1,430,182.
4. Average number of persons served per carrier, 1,132.
5. Average number of places of delivery per carrier, 292.
6. Number of street letter boxes in use, 3,131.
7. Number of package boxes in use, 230.
8. Number of combination letter and package boxes in use, 161; total, 3,522.
9. Percentage of residences provided with mail receptacles, 35.
10. Percentage of business places provided with mail receptacles, 25.

DELIVERIES AND COLLECTIONS.

11. Total average daily time of carriers (including collectors), 7.50.
12. Number of pieces of mail of all classes routed per minute per carrier on Wednesday, March 8, 1911, 14.
 - (a) Number of pieces of first-class mail routed per minute per carrier on Wednesday, March 8, 1911, 18.
13. Average distance traveled daily by carriers engaged exclusively in making collections—on foot, 14½.
 - (a) Average distance traveled daily by carriers engaged exclusively in making collections—mounted, 17

[Back.]

14. Statement showing daily averages for the work described below, during the six days, March 6 to 11, 1911, inclusive.

For carriers making—	Average daily office time per carrier.	Average weight in pounds of mail delivered daily per carrier.		Average number pieces of mail delivered daily per carrier.		Average number mail receptacles per route.	Average number stops made daily per carrier.	Average number miles traveled daily.	
		First class only.	All classes.	First class only.	All classes.			Footmen.	Mounted men.
1 trip.....									
2 trips.....	1.18	5½	36	254	424	86	208	14	21
3 trips.....	1.33	8½	44	448	573	110	301	14	20
4 trips.....	2.26	13	50	594½	766	123	342	11½	
5 trips.....	3.19	27	68½	1,157	1,176	117	295	8½	
6 trips.....									
7 trips.....									
8 trips.....									
Average for all carriers who make deliveries, regardless of number of trips.....	2.09	13½	49½	613	735	109	287	12½	20

15. Statement showing the number of deliveries and collections scheduled to be made and the character of the territory served.

Number of delivery routes scheduled for trips as follows—				Number of letter boxes scheduled for collections as follows—			
Trips.	Business.	Residence.	Mixed business and residence.	Collections.	Business.	Residence.	Mixed business and residence.
1.....				1.....		3	
2.....		59	2	2.....		113	6
3.....		155	57	3.....		210	13
4.....	10	185	178	4.....		259	8
5.....	31	7	3	5.....	9	218	35
6.....	7		12	6.....	21	482	46
7.....	79			7.....	25	308	103
8.....				8.....	51	371	168
				9.....	20	181	17
				10.....	11	47	13
				11.....		108	43
				12.....	66	40	32
				13.....	1	2	22
				14.....	4	2	6
				15.....	61		6
				16.....	1		
				17.....	10	2	1
				18.....	54		2
				19.....	60		4
				20.....	28		
				21.....	16		
				22.....	38		1
				All over 22.....	146		

Residence territory should include sections containing mainly dwellings, but throughout which are scattered groceries, drug stores, and small business concerns.

Mixed business and residence territory refers to sections containing a considerable number of business places whose mail is important and forms a relatively large proportion of the whole amount.

I certify the foregoing information is correct.

_____, Postmaster.

_____, 1911.

[Face.]

POST OFFICE, SAN FRANCISCO; STATE, CALIFORNIA.

INFORMATION REGARDING CITY DELIVERY SERVICE, 1911.

[To be filled in by department.]

Gross receipts fiscal year ended June 30, 1911, \$——.

Cost of City Delivery Service fiscal year ended June 30, 1911, \$——.

Percentage of cost of City Delivery Service fiscal year 1910, 18.23.

[Postmasters will answer the following questions.]

GENERAL.

1. Total number of letter carriers, 355.
 - (a) Number of mounted carriers, 13.
 - (b) Number of carriers engaged exclusively in collecting, 40.
2. Estimated number of square miles served by carriers, 29.
3. Estimated population served by carriers, 425,000.
4. Average number of persons served per carrier, 1,197.
5. Average number of places of delivery per carrier, 327.
6. Number of street letter boxes in use, 1,027.
7. Number of package boxes in use, 121.
8. Number of combination letter and package boxes in use, 159.
9. Percentage of residences provided with mail receptacles, 20.
10. Percentage of business places provided with mail receptacles, 51.

DELIVERIES AND COLLECTIONS.

11. Total average daily time of carriers (including collectors), 7.52.
12. Number of pieces of mail of all classes routed per minute per carrier on Wednesday, March 8, 1911, 9.94.
 - (a) Number of pieces of first-class mail routed per minute per carrier on Wednesday, March 8, 1911, 13.43.
13. Average distance traveled daily by carriers engaged exclusively in making collections—on foot, 15.4.
 - (a) Average distance traveled daily by carriers engaged exclusively in making collections—mounted, 25.4.

[Back.]

14. Statement showing daily averages for the work described below during the six days, March 6 to 11, 1911, inclusive.

For carriers making—	Average daily office time per carrier.	Average weight in pounds of mail delivered daily per carrier.		Average number pieces of mail delivered daily per carrier.		Average number mail receptacles per route.	Average number stops made daily per carrier.	Average number miles traveled daily.	
		First class only.	All classes.	First class only.	All classes.			Footmen.	Mounted men.
1 trip.....	1.31	5.86	41	237	392	79	207	9.5	17.78
2 trips.....	1.42	9.95	53	469	700	87	318	11.36	23.82
3 trips.....	2.05	14.44	56	638	891	71	381	11.92	.....
4 trips.....	2.16	22.33	62	921	1,141	40	261	11.34	.....
5 trips.....	2.37	44.43	106	1,776	2,036	112	344	9.15	.....
6 trips.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
7 trips.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
8 trips.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Average for all carriers who make deliveries, regardless of number of trips.....	2.02	19.40	63	808	1,032	78	302	10.65	20.8

15. Statement showing the number of deliveries and collections scheduled to be made and the character of the territory served.

Number of delivery routes scheduled for trips as follows—				Number of letters boxes scheduled for collections as follows—			
Trips.	Business.	Residence.	Mixed business and residence.	Collections.	Business.	Residence.	Mixed business and residence.
1.....	4	.....	1.....	.....	.....	.....
2.....	113	15	2.....	.....	131	.....
3.....	25	52	3.....	.....	47	.....
4.....	17	4.....	.....	29	.....
5.....	13	.....	.....	5.....	.....	211	41
6.....	76	.....	.....	6.....	.....	63	112
7.....	7.....	.....	.....	165
8.....	8.....	.....	.....	142
.....	9.....	.....	.....	9
.....	10.....	.....	.....	.....
.....	11.....	.....	.....	.....
.....	12.....	.....	.....	.....
.....	13.....	.....	.....	.....
.....	14.....	.....	.....	.....
.....	15.....	36	.....	.....
.....	16.....	224	.....	.....
.....	18.....	106	.....	.....
.....	22.....	7	.....	.....

Residence territory should include sections containing mainly dwellings, but throughout which are scattered groceries, drug stores, and small business concerns.

Mixed business and residence territory refers to sections containing a considerable number of business places whose mail is important and forms a relatively large proportion of the whole amount.

I certify the foregoing information is correct.

_____, Postmaster.

_____, 1911.

[Face.]

POST OFFICE, WASHINGTON, D. C.

INFORMATION REGARDING CITY DELIVERY SERVICE, 1911.

[To be filled in by department.]

Gross receipts fiscal year ended June 30, 1911, \$——.

Cost of City Delivery Service fiscal year ended June 30, 1911, \$——.

Percentage of cost of City Delivery Service fiscal year 1910, \$25.58.

[Postmasters will answer the following questions.]

GENERAL.

1. Total number of letter carriers, 321.
 - (a) Number of mounted carriers, 35.
 - (b) Number of carriers engaged exclusively in collecting, 79.
2. Estimated number of square miles served by carriers, 67.
3. Estimated population served by carriers, 340,000.
4. Average number of persons served per carrier, 1,059.
5. Average number of places of delivery per carrier, 349.
6. Number of street letter boxes in use, 1,358.
7. Number of package boxes in use, 285.
8. Number of combination letter and package boxes in use, 132.
9. Percentage of residences provided with mail receptacles, 19.
10. Percentage of business places provided with mail receptacles, 77.

DELIVERIES AND COLLECTIONS.

11. Total average daily time of carriers (including collectors), 7.35.
12. Number of pieces of mail of all classes routed per minute per carrier on Wednesday, March 8, 1911, 11.4.
 - (a) Number of pieces of first-class mail routed per minute per carrier on Wednesday, March 8, 1911, 13.3
13. Average distance traveled daily by carriers engaged exclusively in making collections, on foot, 11.12.
 - (a) Average distance traveled daily by carriers engaged exclusively in making collections—mounted, 22.57.

[Back.]

14. Statement showing daily averages for the work described below, during the six days, March 6 to 11, 1911, inclusive.

For carriers making—	Average daily office time per carrier.	Average weight in pounds of mail delivered daily per carrier.		Average number pieces of mail delivered daily per carrier.		Average number mail receptacles per route.	Average number stops made daily per carrier.	Average number miles traveled daily.	
		First class only.	All classes.	First class only.	All classes.			Footmen.	Mounted men.
1 trip.....	0.37	2.75	19	168	210	10	185	15	
2 trips.....	1.16	8.25	51	359	494	10	245	10	22.5
3 trips.....	1.57	14.3	72	532	767	46	378	8.9	21.5
4 trips.....	2.47	16.9	99	633	871	268	268	14.75	25.5
5 trips.....	2.45	34	100	1,277	1,483	151	366	8.25	
6 trips.....									
7 trips.....									
8 trips.....									
Average for all carriers who make deliveries, regardless of number of trips.....	1.58	16	73	617	825	60	288	11.48	20.66

15. Statement showing the number of deliveries and collections scheduled to be made and the character of the territory served.

Number of delivery routes scheduled for trips as follows—				Number of letter boxes scheduled for collections as follows—			
Trips.	Business.	Residence.	Mixed business and residence.	Collections.	Business.	Residence.	Mixed business and residence.
1.....		1		1.....		9	
2.....		41	2	2.....		74	16
3.....		121	36	3.....	2	51	
4.....	5			4.....		14	
5.....	36			5.....	5	19	
6.....				6.....	29	143	
7.....				7.....	7	444	36
8.....				8.....	8	283	
				9.....			
				10.....	57		8
				11.....			
				12, etc.....			56
				18.....	229		

Residence territory should include sections containing mainly dwellings, but throughout which are scattered groceries, drug stores, and small business concerns.

Mixed business and residence territory refers to sections containing a considerable number of business places whose mail is important and forms a relatively large proportion of the whole amount.

I certify the foregoing information is correct.

_____, Postmaster.

_____, 1911.

[Face.]

POST OFFICE, CLEVELAND; STATE, OHIO.

INFORMATION REGARDING CITY DELIVERY SERVICE, 1911.

[To be filled in by department.]

Gross receipts fiscal year ended June 30, 1911, \$——.

Cost of City Delivery Service fiscal year ended June 30, 1911, \$——.

Percentage of cost of City Delivery Service fiscal year 1910, 19.28.

[Postmasters will answer the following questions.]

GENERAL.

1. Total number of letter carriers, 386.
 - (a) Number of mounted carriers, 11.
 - (b) Number of carriers engaged exclusively in collecting, 22.
2. Estimated number of square miles served by carriers, 57.
3. Estimated population served by carriers, 600,000.
4. Average number of persons served per carrier, 1,554.
5. Average number of places of delivery per carrier, 451.
6. Number of street letter boxes in use, 792.
7. Number of package boxes in use, 78.
8. Number of combination letter and package boxes in use, 190.
9. Percentage of residences provided with mail receptacles, 30.
10. Percentage of business places provided with mail receptacles, 19.

DELIVERIES AND COLLECTIONS.

11. Total average daily time of carriers (including collectors), 7.52.
12. Number of pieces of mail of all classes routed per minute per carrier on Wednesday, March 8, 1911, 17.
 - (a) Number of pieces of first-class mail routed per minute per carrier on Wednesday, March 8, 1911, 22.
13. Average distance traveled daily by carriers engaged exclusively in making collections—on foot, 12.
 - (a) Average distance traveled daily by carriers engaged exclusively in making collections—mounted, 17.

[Back.]

14. Statement showing daily averages for the work described below during the six days, March 6 to 11, 1911, inclusive.

For carriers making—	Average daily office time per carrier.	Average weight in pounds of mail delivered daily per carrier.		Average number pieces of mail delivered daily per carrier.		Average number mail receptacles per route.	Average number stops made daily per carrier.	Average number miles traveled daily.	
		First class only.	All classes.	First class only.	All classes.			Foot men.	Mounted men.
1 trip.....	1.03	5	43	243	388	129	168	14	18
2 trips.....	1.45	12	68	596	833	122	332	12	.....
3 trips.....	1.58	24	78	1,070	1,273	60	284	11	.....
4 trips.....	2.17	33	80	1,413	1,543	13	191	10	.....
5 trips.....	2.57	56	118	2,063	2,266	52	296	7	.....
6 trips.....									
7 trips.....									
8 trips.....									
Average for all carriers who make deliveries, regardless of number of trips.....	1.57	20.5	76	892	2,023	17	314	11	18

15. Statement showing the number of deliveries and collections scheduled to be made and the character of the territory served.

Number of delivery routes scheduled for trips as follows—				Number of letter boxes scheduled for collections as follows—			
Trips.	Business	Residence.	Mixed business and residence.	Collections.	Business.	Residence.	Mixed business and residence.
1.....		3		1.....		5	
2.....		204		2.....		154	
3.....			22	3.....		489	
4.....	21			4.....		45	17
5.....	52			5.....			28
6.....				6.....	29		11
7.....				7.....	11		
8.....				8.....	5		11
				9.....	16		
				10.....	19		
				11.....			
				12, etc.....	30		
				14.....	17		
				15.....	12		
				16.....	5		
				17.....	26		
				20.....	20		
				22.....	14		
				24.....	18		

Residence territory should include sections containing mainly dwellings, but throughout which are scattered groceries, drug stores, and small business concerns.

Mixed business and residence territory refers to sections containing a considerable number of business places whose mail is important and forms a relatively large proportion of the whole amount.

I certify the foregoing information is correct.

—, 1911. —, Postmaster.

No. 11

HEARINGS

BEFORE THE

COMMITTEE ON EXPENDITURES IN THE POST OFFICE DEPARTMENT

HOUSE OF REPRESENTATIVES

ON

HOUSE RESOLUTION NO. 109

TO INVESTIGATE THE POST OFFICE
DEPARTMENT

JULY 7, 1911



WASHINGTON
GOVERNMENT PRINTING OFFICE
1911

COMMITTEE ON EXPENDITURES IN THE POST OFFICE DEPARTMENT.

HOUSE OF REPRESENTATIVES.

[Committee room, room 233, House Office Building. Telephone 589. Meets on call.]

WILLIAM A. ASHBROOK, Ohio, *Chairman*.

JOSHUA W. ALEXANDER, Missouri.

RICHARD W. AUSTIN, Tennessee.

WILLIAM C. REDFIELD, New York.

C. BASCOM SLEMP, Virginia.

WALTER I. MCCOY, New Jersey.

HORACE M. TOWNER, Iowa.

ERNEST CORNELL, *Clerk*.

EXPENDITURES IN THE POST OFFICE DEPARTMENT.

COMMITTEE ON EXPENDITURES IN THE
POST OFFICE DEPARTMENT,
HOUSE OF REPRESENTATIVES,
Friday, July 7, 1911.

The committee met at 3 o'clock p. m., Hon. Joshua W. Alexander presiding.

TESTIMONY OF MR. CHARLES P. GRANDFIELD, FIRST ASSISTANT POSTMASTER GENERAL, ACTING POSTMASTER GENERAL— Continued.

Mr. GRANDFIELD. Yesterday Mr. Redfield asked me how long Mr. Voorhies had been postmaster, and I told him about two years. He asked me to supply the exact date of his appointment. I find he was appointed January 25, 1910; and had been postmaster 18 months instead of 2 years.

In looking over the stenographer's report of the hearing of yesterday, it seems that I stated the department had consulted the postmaster and some of the officers of the Brooklyn post office regarding the advisability of putting into effect the inspectors' recommendations, and that we had modified the original plan in some respects in deference to their wishes, but I am afraid that I may have created the impression that the postmaster of Brooklyn indorsed the proposition to reduce the deliveries. He did not. He stated that he recognized the equity of reducing the deliveries, but that if the plan of the inspectors were carried out in full, he feared it would call forth a storm of protest from the patrons of the office; so that while he favored the plan so far as his judgment as a post-office official was concerned, as a citizen of Brooklyn he opposed it, because he knew that it would be contrary to the wishes of many of the patrons of the office.

Mr. REDFIELD. I file the following exhibit, No. 30, it being a telegram:

EXHIBIT No. 30.

[Telegram.]

BROOKLYN, N. Y., *July 6.*

COMMITTEE ON EXPENDITURES IN THE POST OFFICE DEPARTMENT,
Room 292, Congressional Office Building, Washington, D. C.:

The Brooklyn League protests against any reduction in the number of carriers or clerks at the post office at Brooklyn, N. Y. Appropriation for Brooklyn should be based on amount of mail handled, not on the revenue, which, because of proximity to New York post office, is misleading. We object to any policy operating against an

increase of the force. There should be the latest possible collection at night and the earliest possible delivery in the morning. This community of 1,700,000 persons is entitled to first-class postal service. Business and residential sections are so mixed here that any deminution [diminution] in the service affects the means of livelihood of thousands of our people. We do not believe that reduction in the expenses of the Brooklyn office will make for a better service, which should be the chief aim.

THE BROOKLYN LEAGUE.
RUSSELL BENEDICT, *President*.
JOHN F. GEIS, *Secretary*.

I file as Exhibit No. 31 the following letter:

EXHIBIT No. 31.

189 MONTAGUE STREET,
Brooklyn, N. Y., July 6, 1911.

HON. WILLIAM C. REDFIELD, M. C.

DEAR SIR: As a resident of 772 Lincoln Place, which is in your district, I wish to enter protest at the delivery of mail in that section.

Up to about June 15 we had an early morning delivery at 7.30. We now get the first morning delivery at 10 o'clock. With the former early delivery it permitted a man to get mail before leaving for the office, but if one has to wait for the present delivery he can only work half a day.

Certainly in a crowded district like my section we should at least be entitled to as good service as Washington, a city not one-third as large.

If it is necessary to cut deliveries down, why not give us an early and late delivery and cut out the noon delivery?

Yours, respectfully,

C. J. GRACE.

MR. GRANDFIELD. That is our plan exactly; an early morning and a late afternoon delivery in residential territory, not only in Brooklyn but in every other city.

MR. REDFIELD. Mr. Grandfield, I call your attention to an article printed in the Brooklyn Daily Eagle of July 6, 1911, which I read in part:

Better mail service promised to Brooklyn by Post Office Department. Dr. Grandfield tells Congressman Wilson that deliveries will be earlier. Many petitions presented. House committee listens to the complaints of Brooklyn business men and organizations.

Washington, July 6: At 2.30 this afternoon Representative Frank E. Wilson, of Brooklyn, was told by Acting Postmaster General Grandfield that Brooklyn will have a better service. Mr. Grandfield promised Representative Wilson that he would see that the service in Brooklyn is improved and that he would take the matter up at once.

The post-office official said that the first thing he would do would be to order the first mail delivery of the morning to be made earlier. This may involve an increase in the carrier force. If this is necessary, the additional carriers will be put on, said Grandfield. He will see that the service is made satisfactory to the citizens.

Morning conference between Wilson and Grandfield.

Washington, July 6: Representative Frank E. Wilson, of Brooklyn, was an early morning caller at the Post Office Department to-day. Mr. Wilson carried an armful of papers, letters, petitions, and newspaper clippings, all dealing with the complaints against insufficient mail deliveries in Brooklyn. There are dozens of letters from individuals, and resolutions by boards of trade and several organizations, as well as many political clubs.

He had a conference with First Assistant Postmaster General Grandfield and laid down the Brooklyn case before him. Mr. Wilson went straight to the department with the complaints rather than bringing the matter before a congressional committee, because he believes he can get quicker relief for Brooklyn in that way. He made a full statement of the situation, and said that in his opinion the only solution of it was more carriers.

The present force, he told Dr. Grandfield, can not possibly do any more work than it is now performing. He showed why more carriers to cover a given amount of territory are required in a community like Brooklyn than in most other cities. In many towns a carrier makes but one delivery of mail every 20 or 30 feet. Because of the great number of apartments, office buildings, and two-family dwellings in Brooklyn

he often has to make a dozen deliveries in the same distance traveled. Each additional delivery requires time.

Dr. Grandfield gave an attentive ear to the Brooklyn complaints, it being the first time that the situation had been fully explained to the department. He promised to take the subject under immediate consideration, and Mr. Wilson left with the department the great mass of documentary complaints which he brought from Brooklyn.

Dr. Grandfield had to leave his conference with Congressman Wilson to attend a hearing of the Committee on Expenditures in the Post Office Department, where the Brooklyn case also was being thrashed out.

I also desire to file as Exhibit No. 32 a telegram addressed to the chairman of this committee, signed by Congressman Wilson, which is as follows:

EXHIBIT No. 32.

BROOKLYN, N. Y., July 7, 1911.

HON. WM. A. ASHBROOK,
House of Representatives, Washington, D. C.:

Times coupons are in the possession of Grandfield. With the consent and understanding of the Times, in April I took the mail service up with Grandfield and was advised by him that if I could show that the service was not satisfactory in Brooklyn he would remedy it. I did show him, and the Times and other papers helped. The coupon matter was agreed upon more than two weeks ago. I was assured by Grandfield that the service would be improved.

F. E. WILSON.

Did you, Dr. Grandfield, have an interview with Congressman Wilson before you came before the committee?

MR. GRANDFIELD. I did.

MR. REDFIELD. Did Congressman Wilson at that time leave in your hands or show to you, or both, letters, petitions, newspaper clippings, and signed protests dealing with the complaints against insufficient mail deliveries in Brooklyn?

MR. GRANDFIELD. He did, and he did not. There are two questions.

MR. REDFIELD. Answer it in your own way, if you wish.

MR. GRANDFIELD. He exhibited a bundle of papers rolled up in a newspaper and said he wanted to file them with me. I said that I was just on my way to meet your committee, and if he would excuse me I would be glad to see him later and discuss the matter with him. He stated that he would not be able to return to the department later on, and I told him I would send for the superintendent of the division, and he might leave the papers with him, which I did.

MR. REDFIELD. Did you see any of the papers in the case?

MR. GRANDFIELD. I saw them wrapped up in a newspaper; yes.

MR. REDFIELD. Did you read any of them?

MR. GRANDFIELD. No.

MR. REDFIELD. Did you know what they were?

MR. GRANDFIELD. Only what he said. He said that they were complaints against the postal service in Brooklyn.

MR. REDFIELD. You will recall testifying before the committee that you had received no complaints. In view of your conversation with Dr. Wilson, do you desire to modify your testimony?

MR. GRANDFIELD. No; I do not. I did not receive the complaints. He stated that he had them and would present them. I did not know the contents of the papers; and, as a matter of fact, after I did examine the papers they were not specific complaints, but were general complaints. They were statements to the effect that the people objected

to reducing the deliveries from five to three, without giving the reasons for their objections.

I had a conversation with Mr. Wilson in the afternoon, after I left the committee, at which time he did present the papers to me—all of them. He explained in a general way what they were, and I think he read two petitions. The two petitions stated in effect that the people of Brooklyn objected to reducing the number of deliveries from five to three without giving any reasons. The petitioners did not state whether they were business deliveries or residence deliveries; and that is about as far as I went in the examination of the papers. He stated that he had held a conference with the superintendent of the division, Mr. Spilman, and he asked me to send for Mr. Spilman, which I did. Mr. Spilman reported that he had examined the papers carefully, and he saw no reason to modify the plan that the department had instructed the postmaster of Brooklyn to follow; that the complaints were simply in the nature of general statements; they were not specific; they were not similar to the complaints that you read to the committee yesterday, for instance, that the mail for a certain business firm was not delivered in time for that business man to attend to his correspondence.

Mr. REDFIELD. Is that all of your answer?

Mr. GRANDFIELD. That is all.

Mr. REDFIELD. I read from your testimony of yesterday this statement:

Out of your population of 1,500,000 you have brought forth 22 complaints.

I ask you if, in view of the fact that Dr. Wilson has shown you the papers of which you have just testified, you desire to modify that statement?

Mr. GRANDFIELD. How can I modify a statement that was absolutely true at the time it was made? Do you mean to say that you want that statement to stand as against anything that may come up in the future?

Mr. REDFIELD. No; not at all.

Mr. ALEXANDER. If you wish, after having received those complaints through Dr. Wilson, to modify that statement——

Mr. GRANDFIELD. I do not wish to modify that statement. Certainly not; but I am willing to modify any subsequent statement that is dependent on——

Mr. REDFIELD. Let me modify my question; do you care to make any other statement?

Mr. GRANDFIELD. Yes.

Mr. REDFIELD. Do you care to do so?

Mr. GRANDFIELD. Yes; I will make the statement that the department will consider carefully any complaint made by any citizen of Brooklyn, or a citizen of any other place, in regard to deficient mail service, and will remedy it to the fullest extent of its power.

Mr. TOWNER. I am sure Dr. Grandfield made that plain yesterday.

Mr. ALEXANDER. He did at that time. These other matters have come in since the hearing of yesterday.

Mr. GRANDFIELD. The whole point, Mr. Alexander, is that I had not received these complaints at the time I made that statement.

Mr. ALEXANDER. You want to make it clear now——

Mr. GRANDFIELD. Yes.

Mr. ALEXANDER (continuing). That since the statement of yesterday these complaints were filed with you by Congressman Wilson?

Mr. GRANDFIELD. Yes.

Mr. ALEXANDER. And that those complaints are now under consideration by the department in connection with the complaints made here yesterday?

Mr. GRANDFIELD. No; I have not the complaints made here yesterday, and until I get the printed testimony I can not take any action; but as soon as Dr. Wilson made his statement I transmitted all of the complaints to the postmaster at Brooklyn.

Mr. REDFIELD. And yet it is true, is it not, that at the time you made the statement which I have read, "Out of your population of 1,500,000 you have brought forth 22 complaints," you knew there were in existence a very much larger number of complaints?

Mr. GRANDFIELD. I did not.

Mr. REDFIELD. Did you not know what the nature of the papers was that Congressman Wilson showed to you?

Mr. GRANDFIELD. He did not show me any papers.

Mr. REDFIELD. Did he not explain to you anything about the nature of those papers?

Mr. GRANDFIELD. No, sir. Mr. Redfield, I was sitting at my desk at 9.30 in the morning when Congressman Wilson came in and stated the purpose of his interview. I said, "Mr. Wilson, will you not excuse me? I can not keep the committee waiting. I have these papers that I expect to take up there on my desk, to look over, and," I said, "if it is convenient for you to come back at some later hour in the day I will appreciate it very much, because it is simply impossible at this time for me to consider any statement you have to make. If you desire, I will send for the superintendent of the division to come up to go over the matter with you." He stated that he did not want to detain me under those conditions, and that he would be very glad to confer with the superintendent of the division. I did send for Mr. Spilman and they had their conversation, as he informed me in the afternoon. I had no knowledge as to the contents of the papers, except that he said they were complaints against the Brooklyn service. I do not know that he even intimated that they had reference to the City Delivery Service.

Mr. REDFIELD. Then you did know that there had been a large number of complaints against the Brooklyn service?

Mr. GRANDFIELD. I did not know how many. I knew he stated he had some papers he wanted to file with me in regard to the situation in Brooklyn.

Mr. REDFIELD. Yes.

Mr. GRANDFIELD. The exact nature of the papers that he had I did not know, and as a matter of fact I had forgotten the matter entirely when I arrived at the committee room yesterday morning.

Mr. REDFIELD. Then you wish the committee to understand that you did not mention this question of these documents?

Mr. GRANDFIELD. Which documents are you speaking of?

Mr. REDFIELD. Which Congressman Wilson left with you?

Mr. GRANDFIELD. Which Congressman Wilson left with me in the afternoon? He did not leave them with me in the morning.

Mr. ALEXANDER. That newspaper interview from which Mr. Redfield quoted is not accurate?

Mr. GRANDFIELD. The newspaper article is not accurate so far as the morning interview is concerned, no; not altogether accurate so far as the afternoon interview is concerned.

Mr. REDFIELD. How many coupons of the character which I show you on the first page of the Brooklyn Times of June 24 have you received signed?

Mr. GRANDFIELD. Mr. Wilson had a number of newspaper slips of this kind. I presume it was the same thing. I do not know how many there were. I do not think he mentioned the fact at all except to say that there were some newspaper clippings, or something of that sort.

Mr. REDFIELD. Then you wish the committee to understand that at the first interview with Dr. Wilson the matter was but incidentally mentioned?

Mr. GRANDFIELD. That is all. I had no knowledge of what documents he had or what he proposed to file.

Mr. REDFIELD. But that in the afternoon, however, you went over the matter more fully?

Mr. GRANDFIELD. I did. He was in the office perhaps seven or eight minutes.

Mr. REDFIELD. I ask, Mr. Chairman, that the papers left by Congressman Wilson in the department be turned over to this committee by the department.

Mr. GRANDFIELD. I explained, Mr. Redfield, that upon receiving these papers I wrote a personal letter to the Brooklyn postmaster, transmitting all of the complaints. I can have them sent for, of course, if you desire.

Mr. REDFIELD. I ask that they be sent for and turned over to this committee.

Mr. ALEXANDER. Of course I suppose now that they are in his possession you want him to have time to consider them and return them here?

Mr. REDFIELD. Yes, of course. I ask that they be returned without undue haste, and as soon as they are returned that they be turned over to this committee.

Mr. TOWNER. Do you not want them left there?

Mr. REDFIELD. Yes. I ask that he keep them and return them to this committee when he returns them, together with such report as he may make upon them. Is that satisfactory?

Mr. TOWNER. I should think that would be all right.

Mr. GRANDFIELD. Then when the postmaster makes his report—he was instructed to return the papers, of course?

Mr. REDFIELD. Yes.

Mr. TOWNER. Or a copy of it?

Mr. REDFIELD. Yes; or a copy of it.

Mr. GRANDFIELD. The original papers should be forwarded to the committee with such comment as he chooses to make upon them.

Mr. REDFIELD. Did you say to Congressman Wilson that if necessary additional carriers would be put on?

Mr. GRANDFIELD. I did.

Mr. REDFIELD. Did you say to Congressman Wilson that you would see that the service in Brooklyn is improved?

Mr. GRANDFIELD. No; I would like to explain my answer to the former question. I said to Mr. Wilson that if additional carriers

were needed they would be authorized, but I said, "My judgment is that you have 100 or more carriers now than you need."

Mr. REDFIELD. I would like to file with the committee this copy of the Brooklyn Daily Eagle of July 6 with the other newspapers.

Mr. GRANDFIELD. I said, furthermore, "All legitimate cause of complaint will be corrected, so far as it is in our power to do so," just as I stated to the committee yesterday, that if the number of deliveries—

Mr. TOWNER. Dr. Grandfield, has there ever been the slightest intention in any form or manner to make the service in Brooklyn less in its efficacy than the service in any other city in the United States, under similar conditions?

Mr. GRANDFIELD. Why, of course not. The Postmaster General, as well as every other officer of the department, is interested in improving the efficiency of the service in every possible way. We do not want to take any backward steps. We do not think we have. We do not believe that the committee will think we have after it examines the inspectors' report upon which the action taken by the department was based.

Mr. ALEXANDER. Judge Towner, we have them here now, and I would be glad if you would read them after Mr. Redfield is through with them.

Mr. TOWNER. Yes; very well. It seems, however, that it is the belief of some of the Brooklyn people at least, and perhaps I may say of a number of them, that Brooklyn has been selected as a kind of a victim for the economy process of the Post Office Department. What have you to say in regard to that?

Mr. GRANDFIELD. There is not any economy process in operation so far as I know. The Postmaster General's idea of economy is to improve the service by adopting better business methods, doing the same amount of work with a smaller force; where there have been useless records kept to discontinue them; where unnecessary work is being done to discontinue it. That is exemplified in his plan of systematizing the money-order and registry systems, which has resulted in the saving of hundreds of thousands of dollars, and the service is just as good as it ever was; and no complaint has been made of the reduction of the force in the Money-Order Division, that being where the principal reduction has been made. There have been more clerks dropped out of the Money-Order Division than out of any other branch of the service, and so far as I know there has never been a complaint from any citizen that the money-order system is not now just as efficient as it ever was. The same is true of the registry system, except that there have been some criticisms with respect to that system.

Mr. TOWNER. In a general way, what comment have you to make upon the general proposition that is advanced here that Brooklyn is a great city, with 1,600,000 people and more—

Mr. GRANDFIELD. Yes.

Mr. TOWNER (continuing). And that it is growing very rapidly, at the rate of over 50,000 every year—

Mr. GRANDFIELD. Yes.

Mr. TOWNER (continuing). And that under conditions of that kind it would appear as if an invidious distinction was made against Brooklyn by which their service has been cut down in a general way from five to three deliveries a day? Broadly and generally stated,

that is the charge. What comment do you desire to make in regard to that, in a general way?

Mr. GRANDFIELD. It is our experience in other cities that the service does not require more than three deliveries in the residence sections. The people do not ask for it; they do not want it. Now, to be absolutely frank with the committee, I do not believe that the people of Brooklyn want five deliveries in the residence sections. I do not believe Mr. Redfield wants five deliveries in residence sections. There is no possible excuse for it. The mail is not sufficient in volume to warrant five trips over every street in Brooklyn every day in the week except Sunday. We do not curtail the business deliveries. We have no idea of doing it in Brooklyn or any place else.

Mr. ALEXANDER. Right at that point, Doctor, would it be possible to revert to the five-trip schedule without additional cost?

Mr. GRANDFIELD. No. As Mr. Redfield says, the city of Brooklyn is growing very rapidly. If we maintain a five-trip schedule all over the city of Brooklyn, now and hereafter, we must put on additional men; there is no question about it.

Mr. ALEXANDER. The reason I ask that is that it was suggested to me by a party who professed to know something about it, that that was possible. I do not understand how that could be.

Mr. GRANDFIELD. It is not possible, because as the population grows the number of carriers must be increased, provided we maintain the same schedules. Brooklyn is not the only city that has been affected in this way. There has not been an additional carrier appointed in Boston for two years. Boston has grown some in two years. In certain sections of Boston the City Delivery Service was extravagant. We called the city postmaster's attention to it, and he agreed with us, and a gradual reduction has been made, without any protest from the patrons.

As a matter of fact, in a great many sections of Brooklyn, perhaps in most of them, if this had been done secretly the people would not have realized the fact that the deliveries had been reduced from five to three. As an experiment, last December the deliveries were reduced from five to three for three days. So far as our reports show, and so far as the information of the postmaster goes, there was absolutely no protest, due, no doubt, to the fact that the people did not realize that deliveries had been reduced.

Mr. TOWNER. But still it is not the purpose and intention of the department, as I understood from what you said yesterday, to reduce the deliveries all over the city?

Mr. GRANDFIELD. Certainly we have no such intention.

Mr. TOWNER. But this is only a tentative effort on the part of the department to see how they could—

Mr. GRANDFIELD. Well, it is hardly tentative, because we know that Brooklyn has a residence section, and that the residents of Brooklyn are not entitled to five deliveries unless Washington and Baltimore and St. Louis and Chicago and San Francisco are entitled to five deliveries. People in these other cities do not ask for more than three. They are perfectly satisfied with three. Three is enough. There is not enough mail to justify a carrier walking over his route in those cities five times a day. There is not enough in Brooklyn. The inspector's report shows that clearly.

Mr. REDFIELD. Dr. Grandfield, I am informed that two letter carriers have dropped in Brooklyn from exhaustion from the additional amount of work that has been required of them and the additional territory they have had to cover. What have you to say as to that?

Mr. GRANDFIELD. I have not any doubt that two letter carriers dropped from exhaustion in Brooklyn recently, but it was not due to the extra territory but to the heat. There have been people killed on account of the intense heat all over the country in the last week.

Mr. REDFIELD. I want you to tell us what other cities in the United States have had their carrier service reduced 40 per cent.

Mr. GRANDFIELD. The carrier service in Brooklyn has not been reduced 40 per cent, so far as I know. I do not know of any other city.

Mr. REDFIELD. Has any other city in the United States been reduced as much as Brooklyn has been reduced?

Mr. GRANDFIELD. No; for the simple reason that in no other city has the cost of the service been anything like so great. I explained yesterday that the cost of the service in Brooklyn was more than double the cost in any other large city.

Mr. REDFIELD. Then it is a fact that Brooklyn has had its service cut off more than any other city?

Mr. GRANDFIELD. It is a fact that Brooklyn has had its service placed on the same level, or rather on a little higher level, perhaps, than any other city. It is not a fact that the service under the proposed plan—under the new plan—is not as good as that of any other city. In fact, my judgment is that it is better right now than in any other city in the United States, except in New York and Boston, perhaps; that there is more money being spent, that the delivery service is more frequent, and the collection service much more frequent than in any other city in the United States, right now, with the possible exception of the two cities mentioned. That is my judgment.

Mr. REDFIELD. Are you prepared to lay before the committee to-day the information asked respecting the Borough of the Bronx, in New York?

Mr. GRANDFIELD. No.

Mr. REDFIELD. You have that in preparation?

Mr. GRANDFIELD. I wrote to the postmaster yesterday, as soon as I returned to the office, asking him to furnish the information.

Mr. REDFIELD. How many substitute carriers have been laid off in Brooklyn?

Mr. GRANDFIELD. You will have to explain your question, Mr. Redfield. A substitute carrier is a carrier who works when the principal is away.

Mr. REDFIELD. Yes; that is what I mean.

Mr. GRANDFIELD. Well, he only works when the principal is away, and when the principal is not away, of course the substitute does not work.

Mr. REDFIELD. Yes; and how many men of that character have been laid aside in the Brooklyn service?

Mr. GRANDFIELD. So far as I know no one has been laid aside. Of course, the amount of the substitute service has been reduced, and unquestionably the substitutes will not make as much per month as they have been doing.

Mr. REDFIELD. Yes; they will not be employed as much?

Mr. GRANDFIELD. That is right.

Mr. REDFIELD. And the regular men will do so much more work?

Mr. GRANDFIELD. You understand, however, a substitute is paid only when he is employed. He has no claim against the Government. He agrees to that.

Mr. REDFIELD. But it is a fact that in former years, during the absence on vacation or otherwise of a regular man, a substitute has been employed for that work, whereas now the other regular men take that work up?

Mr. GRANDFIELD. That is true, yes; but we recognize the fact that the volume of mail delivered in July and August in nearly all large cities is considerably reduced, and that it does not require a substitute in the place of every carrier who is on vacation during these two months; and we have utilized our experience in the last three years in reducing the cost of the substitute service. Our saving last year was something like \$250,000.

Mr. REDFIELD. And it is a fact, is it not, that the conditions under which the carrier works to-day vary from former times in this respect, that on a given route taking five men there has been heretofore when one man was absent a substitute man put on, so that there were still five men doing the work, whereas to-day the work of those five men, in the case of the absence of one of them, is put upon the four who remain, and those four men do the work?

Mr. GRANDFIELD. You are correct in your statement, with this exception: We figure that during July and August, in all the large eastern cities especially, four carriers will do the work of five in July and August; in other words, that one man out of five may go on his vacation without the necessity of employing a substitute in his place.

Mr. REDFIELD. Excuse me; I did not hear the last few words of your answer.

Mr. GRANDFIELD. I said that during July and August we estimate that one carrier out of five may have his vacation without the necessity of employing a substitute; in other words, that four carriers will do the work of five for two weeks in July and August during the vacation of the regular man.

Mr. REDFIELD. Have you investigated to see whether the employees, carriers and others, complain as to this condition of affairs, as to overloading them?

Mr. GRANDFIELD. I am very much afraid, Mr. Redfield—I think I cut that out. No.

Mr. REDFIELD. I simply asked if you had investigated.

Mr. GRANDFIELD. No.

Mr. REDFIELD. You have not investigated?

Mr. GRANDFIELD. No.

Mr. REDFIELD. I will ask you if you will investigate carefully as to whether there is being put upon the carrier service of Brooklyn an excessive burden of work arising from the absence of these substitutes?

Mr. GRANDFIELD. There is, of course, no absence--

Mr. REDFIELD. You will investigate, and report?

Mr. GRANDFIELD. I think, if you will permit me to explain, you will discover that there is nothing to investigate.

Mr. REDFIELD. Certainly; on the record, of course.

Mr. GRANDFIELD. Yes; surely, on the record. There is no absence of substitutes. The postmaster has authority to employ substitutes whenever carriers are away, if he chooses.

Unless the weight of the mail is excessive, I do not see how it is possible to overwork a carrier. The carrier works eight hours; no more; not a minute more. He has an interval between trips as a rule; a swing, as they call it. As a rule he is never on the street over six hours. Two hours are spent in the office. He rarely walks more than 12 miles. Now, for a good, husky man, trained in the business of walking the streets, I can not see where he can be overworked. If the weight of the mail is too much for him to carry, of course, he might be overburdened; but the postmaster's report of the mail carried out on July 4 showed that 50 pounds was the heaviest weight. Of course 50 pounds is a heavy weight, but I do not think a healthy man would be overburdened by carrying 50 pounds for 20 minutes, and that is about as far as he must carry it before the load begins to lighten.

Mr. ALEXANDER. You spoke about the service in July and August. That lessening of the service is on account of that being a vacation period for business men?

Mr. GRANDFIELD. Yes.

Mr. ALEXANDER. And the mail during that period is not so heavy as in other months of the year?

Mr. GRANDFIELD. Yes; and that is true not only for business men, but of the residents. In Baltimore, for instance, a trip through the residence section will show every other residence closed up; no mail delivered.

Mr. REDFIELD. Is it not a fact that there is a peculiar and special duty laid upon the carriers then, which takes more time than their other work, namely the forwarding of the mail from those addresses to the new addresses given by those people who are away?

Mr. GRANDFIELD. Under the regulations carriers are not permitted to forward mail.

Mr. REDFIELD. Is it not a fact that the Brooklyn carriers, and central offices and stations, furnish a card for the express purpose of ordering mail forwarded?

Mr. GRANDFIELD. Undoubtedly.

Mr. REDFIELD. That card is turned over to the carrier for that route, and that carrier is expected to arrange the forwarding of that mail as a portion of his day's work?

Mr. GRANDFIELD. The card is furnished by the Post Office Department. It is given to the carrier in order that he may correct his route book. Still, assuming that the carrier does forward the mail, do you think it would be especially burdensome for a carrier, on a hot day, to sit in the office and forward his mail?

Mr. REDFIELD. I am asking you questions. I am asking you whether, as a matter of fact, the time taken in a case of that kind, where there are many such letters to be forwarded, is not as a matter of fact so great as to seriously burden the remaining hours for the routes that have to be covered in the same time?

Mr. GRANDFIELD. That is what I was trying to answer when you stated "seriously burdened." I do not see how it would seriously burden a man to sit at his desk and forward a few letters. It would take a part of his time, but the time he puts in in his office he is not

delivering mail. I do not appreciate the proposition of its being burdensome. It would take some of his time.

Mr. REDFIELD. Have you ever seriously investigated as to the amount of time required?

Mr. GRANDFIELD. Naturally not, from the fact that the regulations prohibit carriers from forwarding mail.

Mr. REDFIELD. And yet, as a matter of fact, you know that they are expected to do it, do you not?

Mr. GRANDFIELD. No. I know, as a matter of fact, in some instances they do. I would say that the amount of time required for the carrier to forward the mail would be 10 or 15 minutes, perhaps, a day.

Mr. REDFIELD. Are you willing to notify the postmaster at Brooklyn that carriers shall cease doing that work they are now on?

Mr. GRANDFIELD. Perfectly.

Mr. REDFIELD. Will you do so?

Mr. GRANDFIELD. If it is the desire of the committee. If you have any evidence that that is being done I would be glad to do so; yes, sir.

Mr. ALEXANDER. Do you make that as a complaint, Mr. Redfield, that they are required to?

Mr. REDFIELD. Of course they are. I know they are, of my own knowledge.

Mr. TOWNER. They are not required to?

Mr. REDFIELD. They are told by the postmaster to do it.

Mr. GRANDFIELD. Will you permit me to ask you a question?

Mr. REDFIELD. Certainly.

Mr. GRANDFIELD. Do you think that the carriers object to forwarding mail?

Mr. REDFIELD. I do not know what the carriers would object to. I know that some men feel that they are seriously burdened.

Mr. GRANDFIELD. Do you think any carrier feels that he is seriously burdened by having to forward a few pieces of mail?

Mr. REDFIELD. I think so.

Mr. GRANDFIELD. Do you think the time spent in forwarding the mail would equal the time required to deliver it?

Mr. REDFIELD. I think so. Now I will ask you a question.

Mr. GRANDFIELD. All right.

Mr. REDFIELD. I receive a considerable amount of mail at my house. Is it not a matter of fact that to handle every one of those letters separately, and to rewrite the address, takes longer than to walk up my stoop and leave the whole bundle?

Mr. GRANDFIELD. That would depend on how far he had to walk.

Mr. REDFIELD. Ten or fifteen feet.

Mr. GRANDFIELD. But suppose your residence happened to sit back in the yard 200 or 300 feet?

Mr. REDFIELD. They do not do that sort of thing in that district.

Mr. GRANDFIELD. No; but I am talking about the service as a whole.

Mr. REDFIELD. I will ask you if it is not a fact that the net revenue from the Brooklyn post office for the year ending June 30, 1909, was \$640,830.19?

Mr. GRANDFIELD. I do not know. We have never been able to determine, until the last few months, that there was such a thing as a net revenue in the postal service.

Mr. REDFIELD. I will ask you if the net revenue for the Brooklyn post office for the year ending June 30, 1910, was not \$655,077.65?

Mr. GRANDFIELD. If you consider that net revenue represents the difference between the gross receipts and the money actually paid out by the postmaster, I have no doubt that the figures are correct.

Mr. REDFIELD. I will ask you if there is not a steady, regular growth in the borough of Brooklyn—in the Brooklyn post office?

Mr. GRANDFIELD. Undoubtedly.

Mr. REDFIELD. Will you explain to the committee how you save expense, giving details, if you please, by the reduction of deliveries?

Mr. GRANDFIELD. I explained yesterday that the statement submitted by the postmaster of the changes in the routes shows the way that the expense is reduced.

Mr. REDFIELD. Yes; but I want to hear your statement of it. I do not mean every minute detail, but what are the items of saving; for instance, laying off so many men at so much a day, so much.

Mr. GRANDFIELD. I would explain it in this way, Mr. Redfield. A carrier is to make five deliveries over a certain territory, and it requires him 20 minutes to walk from the post office to the beginning of his route. In making five deliveries he loses 200 minutes in going and returning from his route before he begins to deliver mail and after he finishes making deliveries. Do I make that clear?

Mr. REDFIELD. Yes.

Mr. GRANDFIELD. I think that statement is a little bit exaggerated. Probably a carrier does not walk as much as 20 minutes before he reaches his district. We would better say 10 minutes. Then he would consume 50 minutes in the 5 trips going to the beginning of his route before commencing to deliver mail, and 50 minutes returning from his route, which would make 100 minutes absolutely lost by reason of 5 deliveries. Now, if he makes only 2 deliveries, he loses 20 minutes going and 20 minutes returning, which would make a gain of an hour by making 2 deliveries instead of 5. Do I make myself clear?

Mr. REDFIELD. There is an hour of waste time; yes, I understand.

Mr. GRANDFIELD. Then if it takes him an hour to make each delivery, that would be 5 hours in making deliveries. Assuming that it would take him an hour and a half to make each delivery, if he makes 2 deliveries only it would take only 3 hours. There he has a gain of 3 hours. Multiply that by 1,035, the number of carriers, and you will have the saving in time.

Mr. REDFIELD. In other words, the saving is made by dispensing with a certain number of carriers?

Mr. GRANDFIELD. Surely.

Mr. REDFIELD. How many men do you expect to lay off in Brooklyn?

Mr. GRANDFIELD. We have laid off now, from the regular routes, 106.

Mr. REDFIELD. There are 106 fewer carriers than there were before?

Mr. GRANDFIELD. There are 106 fewer routes. No; the number of men is just the same. These 106 men that you speak of are now doing the substitute and auxiliary work.

Mr. REDFIELD. Then the amount of saving is made by saving so much of time as is the difference between what the 106 men would

do if they were employed all the time, and what they would do if employed but a portion of the time?

Mr. GRANDFIELD. Oh, no; the actual saving is the reduction in the substitute and auxiliary force.

Mr. REDFIELD. Will you not figure out for yourself what the saving is and how it is made?

Mr. GRANDFIELD. If no additional territory is covered, we will save 106 carriers, and, estimating the salary of a carrier at \$1,050, it would be 1,050 times 106.

Mr. REDFIELD. 1,050 times 106?

Mr. GRANDFIELD. That is, in time. You understand that the saving is not immediately made.

Mr. REDFIELD. What do you mean by "in time" yourself?

Mr. GRANDFIELD. The Postmaster General has given instructions that no competent employee shall lose his position by reason of any reduction in force, on the ground that he, the employee, is not in any way responsible for such reduction; and he has instructed me that when a reduction in force is possible, or feasible, or necessary, I must find places for the men that are displaced. Now, when these 106 men are displaced and there are other positions found for them there will be a saving of 106 men. In the meantime we employ about that number of substitutes.

Mr. REDFIELD. These men you employ as substitutes?

Mr. GRANDFIELD. These men we employ as substitutes, daily, and they are receiving the same pay as they were before, but their work is not perhaps so pleasant, so far as the carriers are concerned.

Mr. REDFIELD. You mean they work just as much?

Mr. GRANDFIELD. Just as much.

Mr. REDFIELD. When there is no saving?

Mr. GRANDFIELD. There is a saving of the substitute force.

Mr. REDFIELD. How much does that amount to?

Mr. GRANDFIELD. Every time one of these men performs eight hours' service, he saves the service of that substitute.

Mr. REDFIELD. You save the services of that substitute?

Mr. GRANDFIELD. Yes.

Mr. REDFIELD. How much does a substitute work, upon the average?

Mr. GRANDFIELD. I suppose there are 100 or more substitutes employed on an average in Brooklyn eight hours a day at the rate of 30 cents an hour.

Mr. REDFIELD. You are saving, then, 100 men per annum at the rate of \$3 a day?

Mr. GRANDFIELD. \$2.40 a day; eight hours at 30 cents an hour.

Mr. REDFIELD. You are saving 100 men for 300 days, approximately at \$2.40 a day?

Mr. GRANDFIELD. That is right.

Mr. REDFIELD. Then you are saving a total of \$72,000?

Mr. GRANDFIELD. It figures out that way; yes, sir.

Mr. REDFIELD. That is your immediate saving; and your maximum saving would amount approximately to \$111,300 for 106 men at \$1,050 each?

Mr. GRANDFIELD. Well, I presume that is a correct statement; but we must take into consideration the fact that Brooklyn is growing rapidly—at the rate of 50,000 people a year—and they must be served. The service must be extended to certain suburban territory that has

now no city delivery, so that instead of dropping 106 men in the next year, we will not do that, as a matter of fact; but some of those men will be employed in serving additional routes—additional territory.

Mr. REDFIELD. Then, as I understand it, it saves \$72,000 a year now. Does it seem to you good management to reduce the service 40 per cent to the people in order to save 11 per cent?

Mr. GRANDFIELD. Mr. Redfield, I am not familiar with your mathematics. I do not know how you get your 40 per cent. I do not admit that we have reduced the service 40 per cent.

Mr. REDFIELD. The revenue was \$665,077.65. You say that you will affect a saving, by reducing the letter-carrier service 40 per cent, of \$72,000?

Mr. GRANDFIELD. No; I beg your pardon.

Mr. REDFIELD. Pardon me. Let me finish my question, if you will? That would add to the net revenues of the office about 11 per cent, assuming those facts to be generally true.

Mr. GRANDFIELD. But I do not, you know.

Mr. REDFIELD. You say those are not facts?

Mr. GRANDFIELD. I do not assume—I do not admit—that we have reduced the service 40 per cent. Those are your figures, not mine.

Mr. REDFIELD. Wherever you have reduced the service from five deliveries a day to three, you have reduced the service 40 per cent?

Mr. GRANDFIELD. I do not admit that, Mr. Redfield.

Mr. ALEXANDER. Do you mean 40 per cent in the residence districts?

Mr. REDFIELD. Wherever the number of deliveries is reduced from five to three, the service is reduced 40 per cent, is it not?

Mr. GRANDFIELD. I do not admit that. The deliveries have been reduced 40 per cent, but the service is given just the same as before. We are delivering just as much mail, but not so frequently.

Mr. REDFIELD. Wherever you have reduced the number of deliveries from five to three, you have reduced the number of deliveries 40 per cent. Wherever you have reduced the deliveries from five to four, you have reduced the number of deliveries 20 per cent?

Mr. GRANDFIELD. Unquestionably.

Mr. REDFIELD. I ask you whether, to add a net gain, on your own showing, of approximately 11 per cent to the revenues of the office, you consider reductions in the number of deliveries, of 20 per cent and 40 per cent, respectively, good business management?

Mr. GRANDFIELD. I have explained that the reductions were not made for reasons of economy. I do not understand that the Post Office Department has a right to give double service in Brooklyn and not in other cities. The attention of the department having been called to this extravagant and expensive service, it seems to me that an officer of the department, in view of the oath of office to which he has subscribed, must take cognizance of such a condition.

Mr. REDFIELD. I understood you to say, in the early part of your testimony, that motives of economy had nothing to do with this.

Mr. GRANDFIELD. I say so now.

Mr. REDFIELD. That this was simply a case of removing the injustice done to other people elsewhere, because we had five deliveries.

Mr. GRANDFIELD. Well, of course, you can make an absurdity out of anything, if you put words in my mouth, you know.

Mr. REDFIELD. Is not that the only inference, I ask you?

Mr. GRANDFIELD. If that is the only inference you gain from it, Mr. Redfield, I do not think I can explain it any further.

Mr. REDFIELD. Is not that your testimony?

Mr. GRANDFIELD. I do not think so.

Mr. REDFIELD. It has not been for motives of economy; you have clearly testified that. It is said to be an injustice. To whom? Not to Brooklyn. It is an injustice to others.

Mr. GRANDFIELD. I said nothing about its being an injustice.

Mr. REDFIELD. I understood you to.

Mr. GRANDFIELD. No; I do not think I said that.

Mr. REDFIELD. The idea, then, as I gather—

Mr. GRANDFIELD. Do you mean to say you gained from my testimony the idea that we are reducing the service in Brooklyn to prevent an injustice to other people?

Mr. REDFIELD. Yes; I understood so.

Mr. GRANDFIELD. I am sorry you gained that impression.

Mr. REDFIELD. It was not done for motives of economy?

Mr. GRANDFIELD. No, sir.

Mr. REDFIELD. But because Brooklyn had too much.

Mr. GRANDFIELD. It was done for this reason, as I explained in the beginning, that Brooklyn is being given a service that is excessive and unnecessary, that the people do not need and do not want, which is expensive to the Government and a waste of public money.

Mr. REDFIELD. And yet you do not do this for motives of economy?

Mr. GRANDFIELD. No. You do not stop an expenditure of public money, necessarily, for motives of economy, but for motives of honesty.

Mr. REDFIELD. Then you regard the administration of the Brooklyn office for the last 15 years as having been dishonest?

Mr. GRANDFIELD. No. Do you mean I regard the people of Brooklyn as being dishonest?

Mr. REDFIELD. No; but you regard your predecessors in office, who have permitted this to go on, as dishonest?

Mr. GRANDFIELD. No; not dishonest; ignorant of the true condition of affairs.

Mr. REDFIELD. Then we must understand that this thing has gone on, and Brooklyn has been getting these five deliveries a day, because the superior post-office officials were ignorant?

Mr. GRANDFIELD. Ignorant of that particular fact; yes.

Mr. REDFIELD. Ignorant of that particular fact?

Mr. GRANDFIELD. Yes.

The CHAIRMAN. Is not this often the fact, that certain communities are more active in pushing for facilities, and sometimes these inequalities grow out of—we will not say the pull, but the influence, of Senators and Representatives from these different cities, in getting more than they are entitled to, by favoritism?

Mr. GRANDFIELD. I presume that is true, to a certain extent, but I do not believe that is—

The CHAIRMAN. Do you not have to resist that all the time?

Mr. GRANDFIELD. Yes; perhaps that is true.

The CHAIRMAN. To a certain extent?

Mr. GRANDFIELD. To a certain extent.

Mr. REDFIELD. If conditions have been existing in Brooklyn that were wrong, as I understand you to say, to whom was the wrong done, if it is not to the people of the United States?

Mr. GRANDFIELD. It was done to the people of the United States, but that does not necessarily imply injustice to the people of the United States, because wrong was done in one city.

Mr. REDFIELD. The money of the people of the United States is being used for this purpose?

Mr. GRANDFIELD. Yes.

Mr. REDFIELD. And then it is because you wish to remedy a wrong that is being done to other people that you remove this service from Brooklyn?

Mr. GRANDFIELD. No; I do not make that statement.

Mr. TOWNER. Is it not altogether, Dr. Grandfield, an effort on the part of the department to equalize the service?

Mr. GRANDFIELD. The Postmaster General states that in his letter and I have nothing to add to that.

Mr. TOWNER. You want to give Brooklyn just as good service as any other city has?

Mr. GRANDFIELD. Exactly so.

Mr. TOWNER. And no better?

Mr. GRANDFIELD. And no better. I do not believe we have a right to.

Mr. REDFIELD. I will ask you to file with the committee a list of the towns of 25,000 population and over that now have, under your present arrangement, the same service that Brooklyn has, by which I mean the same number of deliveries per day. That can be done at your convenience.

Mr. GRANDFIELD. We have no such towns. I do not think I could give such a list, because there are no cities of 25,000 population or under that have such a service.

Mr. REDFIELD. I said 25,000 population and over.

Mr. GRANDFIELD. And over?

Mr. REDFIELD. Yes.

Mr. GRANDFIELD. Oh, yes.

Mr. REDFIELD. That is all.

Mr. TOWNER. Dr. Grandfield, there has been some reference made here to a comparison between the service in the Bronx as compared with the service in Brooklyn. Would it be possible for you to ascertain and furnish to the committee any statement that would throw light upon that statement?

Mr. GRANDFIELD. I wrote to the postmaster at New York last night, asking him to furnish a statement showing the gross receipts of the branch offices and stations in the Borough of the Bronx, the number of carriers employed, and the amount of mail delivered, and the number of deliveries daily.

Mr. TOWNER. I wanted to ask you another question. These references that you have made to the cost of service, and the comparisons that have been made by you upon the cost of the service, are not entirely made for the purpose, as I understand you now, of trying to determine how economies and reductions in the cost can be made, but are primarily made for purposes of comparison, are they not?

Mr. GRANDFIELD. Yes.

Mr. TOWNER. For instance, when a certain carrier in a section of the city carries a small weight of mail over a residence portion of the city, the cost of the service of that carrier is approximately as great to the department and to the Government as it would be if he served a much more populous territory, is it not?

Mr. GRANDFIELD. Yes.

Mr. TOWNER. And so the cost of serving that people would be much greater than it would be in serving a people who were more closely congested?

Mr. GRANDFIELD. Yes, sir. That was the way the investigation came to be made of the Brooklyn office. Of course, everyone has known for many years that the cost of the service in Brooklyn as compared with other cities was very high, but they did not know the reason. We assumed, or at least it had been assumed, that because of the very large population in proportion to the receipts, that this excessive cost of the service as compared with the receipts was due solely to the large population. But I do not think that any of my predecessors knew that six deliveries were being made in every section of Brooklyn, and consequently no attempt was being made to correct that.

Mr. TOWNER. You found out upon investigation the conditions in Brooklyn, and what you considered an excessive number of daily deliveries were made in residence parts of the city?

Mr. GRANDFIELD. Yes.

Mr. TOWNER. And that was the commencement of your change in the policy?

Mr. GRANDFIELD. Yes.

Mr. TOWNER. Of reapportionment of the carrier service?

Mr. GRANDFIELD. Mr. Redfield asked me yesterday if we had consulted any of the civic organizations of Brooklyn in regard to a reduction in the delivery service, and I told him we had not; but we consulted the postmaster and we consulted other officers of the department in Brooklyn. In addition to that I did consult a number of postmasters of large cities, 15 or 20, and went over the report with several of them very carefully, to find out to what extent the practice in Brooklyn varied from the practice in other cities, to get their views as to whether we would be justified in making a radical change in the system in Brooklyn; so that the matter was not done hastily, by any means. It was done only after the most careful study.

Mr. REDFIELD. I call your attention to the fact, Dr. Grandfield, that although you say you did this purely in residence districts, and repeatedly made that statement, undoubtedly believing it to be accurate, the records before you show that you cut off the number of deliveries from a very considerable number of large business houses. I want to ask you whether it is not the fact that the reduction in the number of deliveries was made, taking stations as a whole—for instance, taking Station B or Station A or Station D, and reducing the total number of deliveries from that station, considering that arbitrarily as a residence district and without special regard to the actual facts of the locality.

Mr. GRANDFIELD. No; I think we considered the character of the territory served. If you will permit me to read a paragraph from

this inspector's report regarding one of the station, I think it will be relevant. Which is your station, Mr. Redfield?

Mr. REDFIELD. Flatbush is mine. I do not think that is concerned. Mr. GRANDFIELD (reading:)

FLATBUSH STATION.

This is one of the stations which represent the newer and more progressive sections of Brooklyn. Large sections are covered with new and up-to-date residence structures. Only a small portion of it, however, is dense or congested. Some parts are excessively sparse. Route No. 383, for instance, includes 404 city blocks, route No. 391 covers 160 blocks, and route No. 388 has 152 blocks. These three routes have three daily deliveries. The fact is self-evident that the settlement is scattering in order that three deliveries can be made over such vast districts.

There are 20 routes, 40 delivery carriers, and 8 collectors. Six routes have five deliveries, while all others have three. Collections are made 10 times daily. We estimate that the office time, which now totals 109 hours daily, may be reduced in the sum of 46 hours per day and that route time may be reduced 10 hours—equaling 56 hours, or the time of 7 men. To do this, the 6 five-trip routes should be reduced to four deliveries, while several of the present three-trip districts may be curtailed to two deliveries without prejudice to good and reasonable service.

The mail on the six routes now receiving five deliveries weighed an average of 98 pounds to the route during the weighing period there. On the 14 three-trip routes it averaged 75 pounds, for two men in each instance. The office time runs an average of 5:38 per day for the five-trip routes and 5:24 for the three-delivery routes, divided between two carriers.

Mr. ALEXANDER. Are there any other questions?

Mr. REDFIELD. That is all.

Mr. ALEXANDER. Have you any questions, Judge Towner?

Mr. TOWNER. No; I have not any other questions.

Mr. GRANDFIELD. Do I understand that you want a list of all city-delivery offices?

Mr. REDFIELD. I want all cities of over 25,000 people that have a similar service in residence districts.

Mr. GRANDFIELD. That have a similar service?

Mr. REDFIELD. The same number of deliveries in residence districts.

Mr. TOWNER. Twenty-five thousand is a very small population.

Mr. REDFIELD. That is the point. I want to know why Brooklyn is put down on a level with towns of 25,000 people. I want to see the facts.

Mr. GRANDFIELD. There are no cities of 25,000 population or more that have as many deliveries in residential sections as Brooklyn, with the possible exception of New York and Boston.

(At 3.50 o'clock p. m. the committee adjourned.)

LEWIS PUBLISHING COMPANY

No. 12

HEARINGS

BEFORE THE

**COMMITTEE ON EXPENDITURES IN THE
POST OFFICE DEPARTMENT**

HOUSE OF REPRESENTATIVES

ON

HOUSE RESOLUTION NO. 109

**TO INVESTIGATE THE POST OFFICE
DEPARTMENT**

JULY 12, 1911



**WASHINGTON
GOVERNMENT PRINTING OFFICE
1911**

COMMITTEE ON EXPENDITURES IN THE POST OFFICE DEPARTMENT.

HOUSE OF REPRESENTATIVES.

[Committee room, room 293, House Office Building. Telephone 599. Meets on call.]

WILLIAM A. ASHBROOK, Ohio, *Chairman*.

JOSHUA W. ALEXANDER, Missouri.

RICHARD W. AUSTIN, Tennessee.

WILLIAM C. REDFIELD, New York.

C. BASCOM SLEMP, Virginia.

WALTER L. McCOY, New Jersey.

HORACE M. TOWNER, Iowa.

ERNEST CORNELL, *Clerk*.

LEWIS PUBLISHING CO.

COMMITTEE ON EXPENDITURES IN THE
POST OFFICE DEPARTMENT,
HOUSE OF REPRESENTATIVES,
Wednesday, July 12, 1911.

The committee met at 10 o'clock a. m., Hon. Joshua W. Alexander (acting chairman) presiding.

The following members of the committee were present: Messrs. Alexander (acting chairman), Redfield, McCoy, Austin, and Towner.

There were also present: Mr. Edwin C. Madden, attorney in fact for the Lewis Publishing Co.; Mr. James J. Britt, Third Assistant Postmaster General; and Mr. William C. Wood, superintendent of the Division of Classification, Post Office Department.

MR. ALEXANDER. As explaining the absence of Mr. Ashbrook, the chairman of the committee, I submit for the record the following telegram:

JOHNSTOWN, OHIO, July 11, 1911.

HON. J. W. ALEXANDER, M. C.,
Washington, D. C.:

Will not return this week. I authorize you to preside at the hearing of the Lewis Publishing Co.

WILLIAM A. ASHBROOK.

7.32 P. M.

STATEMENT OF MR. EDWIN C. MADDEN, ATTORNEY IN FACT FOR THE LEWIS PUBLISHING CO.

MR. ALEXANDER. Mr. Madden, what are your initials?

MR. MADDEN. Edwin C. Madden.

MR. ALEXANDER. Mr. Edwin C. Madden is present as the attorney—

MR. MADDEN (interposing). Attorney in fact.

MR. ALEXANDER (continuing). As attorney in fact for the Lewis Publishing Co. That case has been set down for a hearing to-day, and Mr. James J. Britt, the Third Assistant Postmaster General, and Mr. William C. Wood, superintendent of the Division of Classification, are present on behalf of the Post Office Department. I suggest, subject, of course, to the approval of the committee, that Mr. Madden be permitted to make a statement of the case from the standpoint of the Lewis Publishing Co.

MR. TOWNER. Mr. Chairman, since these charges have been so definitely stated by Mr. Madden in his letter of June 8, 1911, addressed to Hon. William A. Ashbrook, chairman of this committee, and since the letter containing these charges has been pri-

committee and has been, I presume, read and inspected by the members of the committee and is now before them, I would suggest that we omit any further formal statement, and that Mr. Madden proceed at once with the introduction of his testimony and showing in support of the allegations which he makes in these charges of the Lewis Publishing Co. That, of course, is only a suggestion, Mr. Chairman.

Mr. ALEXANDER. I had a short conversation with Mr. Madden yesterday evening, and he desires to make a statement to the committee of what he expects to prove and what evidence he proposes to offer in support of the charges contained in this document. As I understand it, this document, which is No. 9 of our hearings, contains the formal charges of the Lewis Publishing Co. against the administration of the Post Office Department. I was about to suggest that the department has also prepared a formal answer to these charges, which has not yet been signed by the Postmaster General, as he is absent, and that in order to make a complete record the charges should come first, and then the answer of the department, followed by the statement of Mr. Madden. Then, if the department prefers to make a statement following the opening statement of Mr. Madden, we can hear such statement. Otherwise, Mr. Madden can produce his proof, and following that the department could submit a general statement, followed by such proof as the department cares to produce.

Mr. McCoy. Does Mr. Madden desire to add something to what is printed here?

Mr. ALEXANDER. He wants to make a statement in connection with these charges.

Mr. AUSTIN. And then it is understood that the answer of the department shall go into the record?

Mr. ALEXANDER. Yes.

Mr. BRITT. We have been unable to get the answer ready before this—it has now been prepared and is awaiting the signature of the Postmaster General—and it appearing that the committee wanted an opportunity to read the several specifications of complaint we desire to request, on behalf of the department, that the response of the department may be read when it is offered, and that it may appear in the record.

Mr. ALEXANDER. It will appear in the record following the charges. At this juncture I desire to ask Mr. Madden whether he expects any part of his statement to be taken by the committee as evidence? If so, under the rule of the committee which has been so far observed, it will be necessary to swear him. If he is simply to make a statement as counsel it will not be necessary to swear him.

Mr. MADDEN. Yes, sir; I think I prefer to be sworn in the matter, with this exception, that I may be permitted to recite the story of the case or present an outline of it.

Mr. ALEXANDER. I will then swear you as to all statements of fact you may make.

(Accordingly, Mr. Madden was duly sworn by the chairman as to all statements of fact he may make in regard to the complaint of the Lewis Publishing Co. against the Post Office Department.)

Mr. AUSTIN. I understand that you simply want to make a statement of this case?

DEB. Yes, sir.

Mr. AUSTIN. Is it not stated here in this document?

Mr. MADDEN. No, sir; if you will remember, a conspiracy is charged there, and my idea is to present the story of the case from the beginning. Then you can incorporate these specific charges, and we will produce evidence upon them. I would like the opportunity of making an introductory statement, and relating the story of the case, subject, of course, to such interrogation as you gentlemen may desire to make. Shall I proceed?

Mr. ALEXANDER. If there is no objection, Mr. Madden will proceed.

Mr. BRITT. The department understood the several specifications of complaint submitted in the statement made by Mr. Madden to embrace the entire number of charges which the Lewis Publishing Co. desire to file against the Post Office Department, and I now desire to ask that, if other charges are to be filed, the Post Office Department may have specific notice of that fact, in order that it may make proper answer in the case.

Mr. MADDEN. If you will permit me, that appears in the letter, a copy of which apparently has been sent to the department. In that letter a conspiracy is charged.

Mr. MCCOY. These are printed, and, of course, a copy will be furnished the Post Office Department.

Mr. ALEXANDER. Yes; full opportunity will be given them.

Mr. AUSTIN. In your letter to the committee, which you signed as attorney in fact, you state—

The foregoing charges and complaints are submitted in response to the resolution of your committee, embodied in your letter of May 27, addressed to the president of the company.

Are you going to add any complaint or charges to this?

Mr. MADDEN. No, sir; but in the beginning of that letter the conspiracy is alleged.

Mr. AUSTIN. My question is this: You state in your letter—

The foregoing charges and complaints are submitted in response to the resolution of your committee, embodied in your letter of May 27, addressed to the president of the company.

Now, do you propose in this verbal statement to add to or submit any additional complaints or charges to those contained in this letter?

Mr. MADDEN. No, sir; except to this extent, that these particular things which are complained of were made possible by reason of the conspiracy, and therefore it is essential to a clear understanding of the matter that that conspiracy be shown.

Mr. AUSTIN. Are you going to make an address to the committee or simply a statement?

Mr. MADDEN. I expect to make a statement and to submit proof of it.

Mr. AUSTIN. Do you not expect to submit evidence covering everything that you are going to say against the Post Office Department?

Mr. MADDEN. Yes, sir.

Mr. AUSTIN. What, then, is the necessity of adding to the statement that has already been filed?

Mr. MADDEN. I do this in order to tell the story.

Mr. AUSTIN. Does not this statement tell the story?

Mr. MADDEN. Not the details of it.

Mr. McCoy. In other words, you consider this in the nature of a formal complaint and now you want to amplify it?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. I suppose this is in the nature of an indictment, and the attorney for the State is going to make his opening statement to the jury?

Mr. MADDEN. Yes, sir; that is it exactly.

Mr. ALEXANDER. You may proceed.

Mr. MADDEN. Mr. Chairman and gentlemen of the committee—

Mr. AUSTIN (interposing). Is that a written statement?

Mr. MADDEN. Yes, sir; these are my notes.

Mr. AUSTIN. How many pages does it contain?

Mr. MADDEN. About 17 pages.

Mr. AUSTIN. And you are going to read that to us?

Mr. MADDEN. Yes, sir.

Mr. AUSTIN. I suggest that it be printed in the record.

Mr. ALEXANDER. I suggest that everything should be read as far as practicable for the information of the committee.

Mr. AUSTIN. Then I shall insist upon the reading of the answer of the Post Office Department.

Mr. MADDEN. That is entirely proper.

Mr. ALEXANDER. The reason it has not been read is because it has not yet been signed by the Postmaster General.

Mr. McCoy. In other words, the Post Office Department can present its case in the same way as the Lewis Publishing Co.

Mr. AUSTIN. But, as a member of this committee, I insist that it shall be read. I understand, of course, that the Post Office Department can present its case in its own way, but I insist that the answer shall be read just as this complaint is to be read.

Mr. ALEXANDER. And it ought to go in the record immediately following the formal charges.

Mr. MADDEN. Mr. Chairman and gentlemen of the committee, responding to your call and complying with the provisions of your resolution, the Lewis Publishing Co. has filed with you its "complaints against the administration of the Post Office Department with regard to the business relations of the company with the department." You now propose to investigate these complaints to learn whether there is proper cause for them.

Mr. TOWNER. I would like to inquire, Mr. Madden, whether it would inconvenience you for members of the committee to make suggestions occasionally or to ask you questions, or would you prefer not to be interrupted?

Mr. MADDEN. I will be glad to answer any questions at any time. I will be glad to be interrupted.

Mr. AUSTIN. When you get through reading the 17 pages, I will probably have forgotten a good deal of it.

Mr. MADDEN. I do not think you will forget this.

Mr. ALEXANDER. You may proceed, Mr. Madden.

Mr. MADDEN. The public has long clamored for an inquiry into this case. It seems to be generally believed that a great wrong has been done, but of what that wrong consists and how it was accomplished

are not clear. If the opportunity be given me, which I believe to be your purpose, I shall make the whole matter clear.

The Lewis Publishing Co. is a publisher. Under the mail-classification laws it has exactly the same rights and privileges in the mails as other publishers, no more and no less. That is to say, the law is for all alike.

Practically all publishers, except those of daily newspapers, and a good part of those also, are dependent upon the mail service for distribution of their products. If there be no distribution, there will be no publishing. That must be well understood. Distribution may be cut off in two ways—first, directly by prohibition altogether, and, second, indirectly by taxing prohibitive rates.

The postal establishment is created by Congress. In order to encourage citizens to embark upon such enterprises, and at the same time cheapen the products to the people, Congress, in the furtherance of a sound public policy and intending to do everything possible to assist in the enlightenment of the people, established a bulk postage rate and devoted a whole class—second class—to the products of publishers. Probably no single thing has done so much for the development of the country.

The Postmaster Generalship was also created by Congress. He derives his powers and his authority, whatever they are, from Congress. Rightfully he has no power or authority except that derived from Congress. He is an instrument of the law. However, it has come about that Senator Davis spoke an eternal truth, but a disgraceful truth, when he said in addressing the Senate on May 25 on the subject of "Post Office Department rulings":

It is justly charged to be no longer true that the Postmaster General interprets the laws of Congress and administers them according to their intent and purpose uniformly and impartially. Now, he makes his own law to suit his own purposes. He is not deterred by the rulings of the Supreme Court that every act of his must be founded upon some law; neither is he deterred by the statute which requires that all his regulations be "consistent with law."

Mr. AUSTIN. Is that your statement?

Mr. MADDEN. No, sir; I am quoting from Senator Jeff Davis.

He introduces in the form of regulations, rulings, or orders whatever novelties he pleases. He is practically without restraint. The citizens of the United States, and especially publishers, are at his mercy.

Mr. AUSTIN. Do you want us to sit here and listen to Senator Davis's speech? Why not prove what you say instead of calling upon us to listen to one of Senator Davis's speeches?

Mr. MADDEN. I am using this by way of introduction, in order to show that the Lewis Publishing Co. has suffered by reason of these attacks.

Mr. AUSTIN. I understood that you were to make a statement, and now you are bringing one of Senator Jeff Davis's speeches in here.

Mr. MADDEN. I adopt his language as my own, then.

Mr. AUSTIN. Well, go on.

Mr. ALEXANDER. He is making his statement as an attorney—

Mr. AUSTIN (interposing). He should make his own statement and not Senator Davis's statement.

Mr. REDFIELD. But he has a right to incorporate that statement in his remarks.

Mr. MADDEN. Senator Root said to the New York Legislature on January 28, 1909:

The essential quality of free government is to be found in the observance by all public officers of the limitations set by law upon their powers. Once admit the right of public officers to disregard the limitations upon their powers, and you are launched on the course by which good men come to be benevolent despots, with the inevitable corollary that bad men have the opportunity to become tyrannical dictators.

One of the present Cabinet officers later said:

It has seemed to me that when the Constitution plainly says that by the message the President may suggest new proposals for legislation, the idea is that under no circumstances shall we go beyond the law, and it has seemed to me that every demand upon Executive power to anticipate authority is nothing more nor less than a denial of popular government and a concession to one-man power.

Mr. AUSTIN. What member of the Cabinet made that statement?

Mr. MADDEN. Mr. Nagel.

It goes without saying that in times of agitation and in times of unprecedented growth the demand upon Executive power is always great. We are fond of the short cut to happiness and sometimes to prosperity; but, for that very reason, these are the times to guard against the destruction of the true public will. We need more ready obedience to existing laws.

The complaints in this case relate principally to official conduct under the mail-classification laws. They amount to a charge that the Postmaster General, and those public officers cooperating with him, have, under a pretended administration of those laws, abused their powers deliberately; that they have wickedly misrepresented some of those laws; that they have willfully violated some of those laws——

Mr. AUSTIN. Mr. Chairman, I object to this kind of presentation of this case.

Mr. MADDEN. I thought you wanted the truth, Mr. Austin.

Mr. ALEXANDER. What is the ground of the objection?

Mr. AUSTIN. I object to what he is stating, there, in his speech; he is not confining himself to a presentation of this case.

Mr. TOWNER. He said that this was in the nature of an opening statement, such as an attorney makes in presenting his case. I think he should be indulged in that respect just as a member of the profession, and I ask that he be permitted to make any statement he desires.

Mr. AUSTIN. I object to it, and I do not think he is treating the committee right in making this sort of statement. He comes here as the attorney of this company, and instead of presenting this case and pointing out what he is going to establish by proof, he goes ahead in violent language to criticize and abuse the administration of my party, and I object to it.

Mr. TOWNER. Do you not think the gentleman ought to be allowed to make his argument either in advance or after the evidence is in?

Mr. AUSTIN. If this committee wants to hear him make a stump speech, it ought to be after the evidence is before the committee.

Mr. REDFIELD. We have a right to the whole truth; and the gentleman has the right, as an attorney, to characterize things. Of course, he takes the risk of proving or not proving the truth of what he now says; and it must be obvious to him as to everybody else

that if he makes a statement that he can not justify later by proof, his failure to do so will have its influence on the committee.

Mr. AUSTIN. I will ask the stenographer to read Mr. Madden's opening statement.

(The stenographer read as follows:)

Mr. AUSTIN. I understand that you simply want to make a statement of this case?

Mr. MADDEN. Yes, sir.

Mr. AUSTIN. Is it not stated here in this document?

Mr. MADDEN. No, sir; if you will remember, a conspiracy is charged there, and my idea is to present the story of the case from the beginning. Then you can incorporate these specific charges, and we will produce evidence upon them, I would like the opportunity of making an introductory statement and relating the story of the case, subject, of course, to such interrogation as you gentlemen may desire to make.

Mr. AUSTIN. Now, do you think you are confining your statement within the limits you indicated in that statement?

Mr. MADDEN. Yes, sir.

(Whereupon Mr. Madden was directed by the committee to proceed with his statement.)

Mr. TOWNER. Let me make one statement, in order that there may be no misunderstanding. This matter has been so very generally discussed and has been so vigorously challenged and defended that I, for one, as a member of the committee, shall stand in favor of the utmost liberty in this hearing to this company or to those who represent it, in order that they may have an opportunity to present every single part of it and to prove every allegation and charge that they have made against the department for any ruling that has been made at any time by it. I am in favor of permitting Mr. Madden, who, as I understand it, is an attorney in reality—are you not?

Mr. MADDEN. No, sir; I am not.

Mr. TOWNER. At least, you represent the Lewis Publishing Co. here as an attorney. I think he will understand, while that is my attitude and, perhaps, it is the attitude of every one on the committee, that does not mean that he will take advantage of that attitude on the part of the committee to waste any of its time, because, of course, he understands, I hope, that our time is valuable to us and is not altogether our own. I want to state for the benefit of my associates that I want to stand for the utmost liberty in this investigation, so that these people can not come out and say to the country that they have not had a full and fair hearing before this committee, even though we shall have to go to the full limit.

Mr. AUSTIN. I do not know anything about this controversy except what I have seen in the public press, and if I have had any feeling at all it has been in favor of the publisher. I am here as a member of this committee to do what is right and just, but in doing this I will not consent, without objection, for the agent or attorney of this company to turn loose a speech filled with abuse and criticism of the administrative officers of this administration.

Mr. ALEXANDER. As I understand it, this relates to the official conduct of a former administration, in fact.

Mr. MADDEN. Yes, sir.

Mr. AUSTIN. That makes it so much the worse, because Mr. Madden was a member of the Post Office Department.

Mr. ALEXANDER. So far as I may have any influence on this investigation, I want to try this case just as I would a case in court, not, however, with the strictness that is usually observed in the admission and exclusion of evidence, but with a view of developing the whole case for the company and for the Government. I do not care to censure the conduct of the representatives of the Lewis Publishing Co. or of the Government if they keep within proper bounds. I assume, of course, that they will not engage in any vituperation and abuse or conduct unbecoming gentlemen in the discussion of the case, but, within proper bounds, I want the fullest liberty accorded the publishing company, as well as the Government, to develop the case with a view of getting at the facts, whatever they are. I have no opinion concerning them, because I have no knowledge of the case except in the most general way.

Mr. BRITT. I want to say at this point a word in behalf of the department relative to the scope of the inquiry. The Post Office Department invites, in so far as it is concerned, the fullest inquiry into the matter of all the matters of which complaint is made. We will, of course, ask the privilege of answering all statements of fact and, if necessary, to make a proper representation of the case in order to meet the arguments made by those who represent the publishing company.

Mr. ALEXANDER. I assume that there will not be the slightest objection to that. You may proceed, Mr. Madden.

Mr. MADDEN. That they have highhandedly set themselves above other of those laws; that they have disregarded the limitations upon their powers and authority in the expenditure of public funds; and, in many other ways to accomplish their ends, have transgressed the scope of their lawful authority and power, and that these matters were made possible by reason of the aforesaid public officers conspiring together for that purpose.

The fact that the Postmaster General or any other public officer has no lawful power to do certain things, or that the law specifically forbids his doing certain things is, however, of small benefit to the citizen to whom he, nevertheless, does those very things, which on the one hand he had no authority to do, and on the other violated the law to do. He is in command of the machinery of the department. If he uses it wrongfully, and to a citizen's injury, what is to be done? The court is the only refuge. In this case it was no refuge at all. The last resort of the citizen then is Congress, where the Lewis Publishing Co. now brings its complaints to be heard upon their merits.

It can not be found that the Postmaster General is given authority to break or disregard a law, even for the purpose which he deems to be a good one. He is the servant, not the master. If he deems the law to be wrong or inefficient, he may recommend an amendment or a new law, as seems to him to be desirable, but the final judgment is with Congress. When the Postmaster General violates or disregards an existing law, he is guilty of usurpation and wrongdoing, and the more so because of his high station and his oath of obedience to the Constitution and the laws of the land.

The basic cause for the complaints in this case lies deep down. There has long been a tendency to enlarge upon postal power. Of late there has been a steady expansion. To accomplish that there was and is departure from the law. The first step met no effective re-

sistance. That favored another, and another, and so on. Finally, the law comes to be almost altogether forgotten; the result is despotism.

In the beginning—that is, from the passage of the mail-classification act of 1879—it was, as Congress contemplated, in the hands of postmasters throughout the country to determine on the spot the class and the rate to be charged upon all matter offered for mailing. They continue to do so to this day in the case of first, third, and fourth class matter. The department makes regulations for their guidance and determines disputes between them and the public. Some time later the function of determining what was second-class matter and what postage rate should be charged upon it was taken out of the hands of postmasters and concentrated in the department at Washington. Now postmasters have nothing to do with it. They may exercise no judgment at all. This change had some advantages. There is something to be said on that side. But the evils that have grown out of it greatly outweigh the good, and it tends more and more to intrenchment of an obnoxious bureaucracy.

A system of "regulations," so called, governing second-class mail matter has been built up. It is no longer the law, but those regulations and alleged interpretations of them which govern the service. The regulations are changing constantly. As Senator Davis puts it, there is no stability, no uniformity. No publisher can read the law and determine what his rights are; no postmaster can tell him. He is a mere clerk. The publisher must wait to know what the latest regulation is and how the department will "construe" it as applied to the questions which are coming up from day to day in his business. Everything tends to creating new questions, to complications, to technicalities, to narrowing down the service, and away from simplicity and broadening out of the service, which in a country like this should be the tendency.

One of the results of all this is that the publishing business is now a most precarious enterprise. A system of espionage has grown up, which is hateful to all with American blood in their veins. It is imposed not only upon the private affairs of publishers, but of all the people. This was not the intention of Congress. It serves no good purpose, but often serves a bad one. Neither is it necessary in the classification of the mails and the management of the mail service.

It is certain that an investigation would show that this espionage, against which there is now a quite general revolt, is much more costly to the people than all the benefits claimed to be derived from it amount to. Investigation would also show that it would be far better for all if the operations of the Postmaster General and his assistants were kept within the confines of the post office and the mail service.

Now, instead of a publisher being able to apply to a postmaster to have his publication classified and rated on the spot, so that he may go about his business—which, considering the enormous compensation they receive, postmasters ought to be competent to do—it not infrequently happens that it requires six months or a year to learn whether a newspaper or a periodical is or is not matter of the second class and entitled to publishers' rates.

Mr. BARRR. May I interrupt you there?

Mr. MADDEN. Certainly.

Mr. BRITT. I object to the statement that there has been a transfer of the classification of second-class mail matter from the postmasters to the Post Office Department as being a partial misstatement of the laws and regulations.

Mr. AUSTIN. Just make a memorandum of it and submit it later to the committee.

Mr. MADDEN. Taking this case as a guide, there must be a system of investigations and inquiries, so called. The post-office inspector system must have its turn at the publisher. It must be ascertained whether he has any gift subscriptions on his list, and how many; what he sold his subscriptions for, for how long a period; whether he gives too much credit to the subscribers; whether the publishing business warranted the dividends which were paid the owners; whether the bookkeeping methods were proper; whether all the expenses of the business were shown, the portion of income from subscriptions and advertising; whether the subscribers are satisfied; whether they will receive the copies sent them, etc. It is doubtful whether all the postage claimed to be saved by this surveillance would pay for half the cost of it.

Anyhow, instead of its being a simple matter to use the mails, it has become a mighty delicate matter. It is well-nigh impossible to avoid trouble; it lurks at every point. Our alleged "post-office inspector" system is engaged not so much in inspecting post-office and the mail service, but in inspecting the private affairs of the people.

If a citizen or publisher believes the rights given him by law are improperly curtailed or denied by some regulation or a construction of it and goes to court to test its consistency with law, all the resources of the Government will be pitted against him. Public funds will be spent for the employment of special counsel to defend tyrannical, technical bureaucracy to the last ditch. The trial of the case will be delayed to the utmost to wear the victim out. If, finally, the Supreme Court should decide in favor of the citizen or publisher, the long uncertainty has nevertheless killed his business.

On the contrary, Congress in its wisdom intended that the postal service, which enters so largely and intimately into the daily lives of the people, should be simple and easy to understand, staple, uniform, cheap, and free from technicality. It intended that he who could read at all could understand. Who follows the trail of this case can not fail to realize that the Postmaster General as he now operates is a lawless despot; that the present conditions tend more and more to that state in the postal service to the defeat of the will of the people expressed in the laws of Congress.

That condition made it possible for Postmaster General Cortelyou, the moment he assumed office, to take this one case into his own hands and out of the hands of the bureau having lawful jurisdiction. That condition made it possible for him to treat this company and to deal with its mail matter according to his personal will, and entirely apart from and differently from the treatment and dealing of the department in due course with all similar cases. That condition enabled him to operate the whole postal service against the business of this company. That condition enabled him to devote the greater part of his entire two years' office holding, to the exclusion or neg-

lect of other public business, to the management and direction of the false and fraudulent operations against this company and its mail matter. That condition enabled him to squander the people's money to accomplish his ends. That condition enabled him at the last moment of his official power—his final official act—by a mere stroke of a pen, without a moment's warning, to execute his and his postal spies' revenge and to wantonly strike down and ruin a well-established law-abiding enterprise, destroying thereby the investments of thousands of honest, innocent, and unoffending people and throwing hundreds of others out of employment. And mark you, this occurred after the company had humbly sought to learn wherein it or its mail matter offended, for it knowingly committed no breach, and promised to correct promptly whatever to the department seemed to be a breach.

The tyranny, the oppression, and the cruelty of it all is scarcely believable.

As it is the duty of Congress to make the laws, it follows that it is its duty to inquire, from time to time, whether those laws accomplish their purpose and with what fidelity they have been administered. This case will, I believe, disclose that the safety of the people, their security in the laws, their supremacy, the preservation of the rights of property, require the supplying of some effective check, the application of some bridle to these self-willed, lawless servants who set themselves above their masters. Some means must be provided for the citizen to stay the despoiling hand and bring to justice him, however high or however low, who misuses the machinery of the department, or his authority, or his power to the injury of the citizen. If we are to be saved the experience through which Mexico is now passing we must definitely know what powers these officials possess and where those powers begin and end. The truth of Webster's utterance, "The contest of the ages has been to rescue liberty from the grasp of executive power," is well exemplified in this case.

These are hard things to say, but I shall show them to be true.

Some time ago Senator James A. Reed wrote the president of the Lewis Publishing Co., and spoke of the long delay of the Postmaster General in making response to a Senate resolution of inquiry affecting one of the company's publications. The Senator suggested that the president of the company come to Washington and see the Postmaster General. He thought possibly the matter might be fixed up. The president replied. I ask permission to read his letter and to place it in the record here. It will assist in the presentation of the case.

MAY 8, 1911.

HON. JAMES A. REED,
United States Senate, Washington, D. C.

MY DEAR SENATOR: Your kind letter of April 26 is received. Thank you very much for your interest.

You will probably find that the reason the Postmaster General has not answered the Davis resolution is because he has a problem on his hands. He must devise some "construction" of the law to give the appearance of righteousness to his conduct.

Of course, the department's action is altogether arbitrary. If you could get below the surface you would find it is especially for our own individual case. No law of Congress ever intended that the use of the mails should depend upon the will or caprice of the Postmaster General for the time being,

but it has come to that. No publishing enterprise can live if he sets out to annihilate it by the methods employed in our case. The law affords no security from the oppressions committed in its name under the devices of "construction."

The department's action in the case of our weekly is but a part of the campaign which has been on since March, 1905. We are, we think, paying the penalty for having too severely criticised persons then and now in office. It has been a hard fight for existence, and has cost millions.

In March, 1907, we were forced to close down completely for nine months. That was a severe blow, but we had hope. When our magazines were later restored to the mails we put forth every effort and made an enormous expenditure to rehabilitate our publishing business, but there was no recovering from the Government blight. We were forced finally to abandon all of our magazines. The Woman's National Daily, now reduced to a weekly, which is the object of present official attention, is (the St. Louis Star Co. is a separate corporation) the one remnant of the Lewis Publishing Co. enterprise, which was, at the beginning of the campaign, one of the most successful in the country.

Now the subscribers of the Weekly everywhere are again being deluged with a series of official inquiries and circulars from the department. It has been so for six years. This is a most effective method of destroying business. One such assault may not kill, but enough will. It serves, among other things, to keep the public informed that we are constantly under Government surveillance.

We have in our files the written order (the documentary proof) for every subscription on our books, and the evidence of payment of the money. It is wholly unnecessary to send out these inquiries, except for the purpose of our undoing. No statute authorizes such a canvas of a publisher's list. No statute authorizes the expenditure of public money for such a purpose. In the last analysis the written orders are the real proof of how much was paid and for how long a period, and of all the other matters necessary to proper administration of the law.

To be a subscriber to any of our publications since March, 1905, has meant to be in receipt almost constantly of official inquiries of one kind or another from the department at Washington or from the postmaster at some place or from the letter carriers or from the post-office inspectors. At one time our patrons are asked if their business transactions are "satisfactory," how much they paid us, when and for how long a period of subscription, and many other such questions. At another time inquiries were made to learn if our patrons were in any way misled or deceived. All the official documents have in them a seeming menace to the party inquired of; some sort of trouble for him or for her for having patronized us at all is to be inferred.

In this way the public is made to know that the Government is still "after" us. Sometime ago a post-office inspector, addressing a meeting of the postmasters of a Western State, said the department was after us and would get us sooner or later. When we can put witnesses on the stand to testify we shall be able to show that at least in one post office when our publications were received through the mails for delivery, instead of making the delivery, the postmaster tore the wrappers off and burned them up, making some other use of the publications. In another case, we shall, if the time is not too far off and our witnesses scattered or dead, show that our patrons, after having called repeatedly at the post office for their copies and have been as often told that none had come for them, later found that goods purchased from the postmaster's grocery store were sent home wrapped in the very copies for which they had inquired.

We have always sought to obey the law faithfully. We have sought to fit our business as promptly as possible to the ever-changing rulings and regulations. All we want now, and all we have ever wanted, is our lawful rights—the rights or privileges, whatever they may be, that are given to other publishers. We have never sought a favor and never will, but our resources are limited. We can not forever fight the department, unrestrained by law and unlimited in resources.

Now we are charged with and complained of for defaulting on our obligations in one way or another and with various other shortcomings. These matters are cited to our discredit, although all, or so much of them as are true, are due directly or indirectly to the official and unjustifiable purpose to investigate us to death. The oppressions of the mail service are directly or indirectly responsible for every default.

The proper fulfillment of our obligations depends upon the prosperity of our business. But how could a business prosper under such conditions? When we placed our publications in the mails and paid the lawful postage upon them, they were secretly stolen and secreted to the extent of hundreds of thousands of copies.

Mr. AUSTIN. Can you prove that?

Mr. MADDEN. Yes, sir.

Later an official inquiry was sent out to our patrons asking if their business transactions were satisfactory. This was one way of discrediting us and breaking up our business not only with readers but with advertisers.

When our books, files, and papers, covering our nearly a million subscribers, were taken by post-office inspectors for an alleged investigation, they were returned in such a state of disorder that it was months before we could properly dispatch our business. Of course there was complaint. This is one other way of discrediting and breaking us up.

It is always true that our outgoing letters and publications in some part never reach destination. In some part they are only held up and delayed, but from one cause or another our patrons are irritated and disgusted. It means trouble and lots of it for anyone to be a subscriber or patron of ours. After persons subscribe they refuse to receive copies from the mails to avoid the trouble it means to receive them. The effect upon business must be apparent.

Now, in a new way in the case of our weekly, we are forced to default upon our subscription contracts. We accepted the peoples' money in good faith. We did not then know, and do not now know, of any law that required us to ascertain whether the money was sent in by the party whose name was given as a subscriber, or whether the subscription was a gift. Now, when these subscriptions have been partly filled, the Department suddenly by a "ruling" imposes a prohibitive tax of seventeen times the lawful rate upon one-fourth of the copies we obligated ourselves to send out, when the rate was a cent a pound. This is because it is estimated that one-fourth of the copies sent out are not paid for by the persons to whom they are addressed.

The department follows this with a flood of circulars and inquiries which question our integrity. A Gatling gun would not be more effective in mowing down a list of subscribers, which is the basis of the existence of every publishing enterprise. Without readers, it can not live. Such circularization will destroy the work of years.

The latest word just come in is that a notice is posted in the post office at Manhattan, Kans., to the effect that we have sold out and have quit. Later we expect to hear of such notices in other post offices. This is a new deal.

Mr. AUSTIN. You complain, apparently, about circulars having been sent out to the subscribers for the purpose of ascertaining whether they were bona fide subscribers. Now, if they were bona fide subscribers and your business was perfectly straight, where would the injury be?

Mr. MADDEN. Because if the people are constantly receiving these circulars, they would be bound to believe that there was something wrong about it. Before we are through with this case, I will submit some statements here from people who called at the post office and were advised by the postmaster that this newspaper was a bad thing to take.

Mr. AUSTIN. Of course, that was improper in the postmaster, but the question here before us is this: If your circulation was bona fide, and the Post Office Department decided to enter into this investigation of it—I know they do it in district I represent—why should there be any complaint if everything was straight?

Mr. MADDEN. I do not say that an ordinary inquiry or investigation would do us any harm, but if you keep it up persistently, and continue to write to the people about it, they will soon come to the

point where they will not want to have anything to do with an enterprise that causes them so much trouble.

So, while the Postmaster General delays responding to the resolution, his agents are actively at work devising ways and means of destroying the remnant of our once great business. Postmasters and other employees throughout the country take their cue from the attitude of the department, when they do not receive instructions.

I have been indicted by the grand jury ten or a dozen times. It took two years to force the first indictment to trial. The Government offered every possible obstruction. When the trial came on and the evidence was in, the judge took the case from the jury and, figuratively speaking, threw the Government out of court. We could get none of the other indictments to trial. All were dismissed.

Mr. AUSTIN. Who was this indicted ten or a dozen times?

Mr. MADDEN. Mr. E. G. Lewis.

Mr. AUSTIN. What are you reading from?

Mr. MADDEN. I am reading from his letter to Senator Reed.

The Government has brought a number of civil suits to collect back postage from us. They have been standing for years. They are to collect on hundreds of thousands of copies of our magazines sent out in the past under the prohibitive rate which Congress fixed for "others than the publisher." It is the same prohibitive rate as is now taxed upon one-fourth of the copies of our weekly. Each copy must be prepaid with a 1-cent stamp. There are 17 in a pound. This is done on some theory that we are not entitled to publishers' rates on those copies of the magazines, as we are now not entitled to publishers' rates on those copies of the weekly.

We would have been glad to have had those suits tried at any time in the past, when our financial condition would have made it possible to put up an effective defense. But the indictments and those civil suits and the official conduct I have outlined briefly have completely broken our commercial credit, reduced and cut off our business income to the point where the company is uncertain of existence from day to day.

Rest assured we here appreciate your interest, but my engagements will not permit me to go to Washington as you suggest. We did so in numerous instances in the past, but it did not help us.

Please understand that while we are badly crippled and used up from the years of war through which we have passed, we still have hope. Our faces are to the rising sun. We are taking a fresh hold and counting the days until the party which stands sponsor for the official conduct of which we complain is itself down and out. We hope, too, that if no other purpose be served, our sufferings and losses will at least enlighten the people in the future as to the necessity of bridling Executive power. We hope no other citizen or company will ever be made to pay such a frightful price for the use of the mails.

Let me, before closing, call your attention to a circumstance. For your information, I inclose a subscription blank and circulars sent out by a New York publisher. He is making an offer of a free 10 years' subscription to his magazine to those who buy from him a set of books alleged to be worth \$35, but which he will sell for \$25, throwing into the bargain the 10 years' free subscription. He says that if the party addressed happens to be already a subscriber, he may present the 10 years' free subscription split up to other persons.

Do not understand me as complaining of what this publisher is doing. I am not. I think publishers should be as free to get all the business they can as those in other pursuits.

Mr. BRITT. Will you be good enough to furnish the department with a copy of that circular?

Mr. MADDEN. It was sent to Senator Reed. It was sent in that letter to Senator Reed, and I have not another copy. It was McClure's Magazine.

I am merely reciting this circumstance that you may see for yourself what a difference it makes whether one be "in" or "out" with the department.

Again, I thank you for your kind interest and attention. It is appreciated. I hope it will continue, and that when our story is fully written and the

ordeal through which we have passed fully understood you and the public will see us as well-intentioned, law-abiding citizens, laboring under most trying circumstances to fulfill every obligation.

You may use this letter as you please. I should be glad to have you place it in the public record. I am, sir, with very great respect,

Yours, very truly,

E. G. LEWIS,
President Lewis Publishing Co.

Mr. AUSTIN. That was in answer to a letter written by Senator Reed to Mr. Lewis, suggesting that he come on here to Washington and go with him to see the Postmaster General to see if this matter could not be arranged, and Mr. Lewis declined to come. He said that he had been here a number of times before, and they could not assist him?

Mr. MADDEN. Yes, sir; he said that his engagements would not permit him to go to Washington, as suggested by Senator Reed.

Mr. BRITT. Referring to the civil suits, is it not a fact that the Department of Justice in 1910, at the instance of the Post Office Department, urgently insisted that all these pending civil suits, to which reference is made in that letter, should be tried at the earliest date possible, and that the representatives of your company refused to try the cases?

Mr. MADDEN. If that is a matter of record, I am unable to show it.

In order to get a clear comprehension of the Lewis Publishing Co.'s case, it is important to make a brief statement concerning the People's United States Bank, which was also located in University City, St. Louis County, Mo., just outside of St. Louis.

I do not represent the People's United States Bank. The committee will not be asked to decide or to consider any of the matters pertaining to it, as to the right or wrong thereof, but only to permit the recitation of certain circumstances and facts concerning that bank, which are so interwoven with the case of the Lewis Publishing Co. that for the sake of clearness in the matters under investigation they should be sent down here. The conspiracy which is charged would scarcely be understandable without this being done.

EXHIBIT No. 1.

POST OFFICE DEPARTMENT,
OFFICE OF POST-OFFICE INSPECTOR IN CHARGE,
ST. LOUIS DIVISION,
St. Louis, Mo., May 12, 1905.

SIR: We have the honor to submit the following report on case No. 39640-C, relating to alleged scheme to defraud by E. G. Lewis, of the Peoples United States Bank, located at Winner Station, St. Louis, Mo., at what is called University Heights Addition, St. Louis, Mo., result of personal investigation begun March 13, 1905, and continued from time to time since.

Before entering upon the case a brief history of Mr. E. G. Lewis's career for the last 10 years may be of interest, as showing something of his conduct and character during that period.

Howard E. Nichols met him in Nashville, Tenn., about August, 1895, where he was in debt for his board and was selling "Anti-Skeet," a tablet composed of saltpeter and insect powder, and taking an interest in him, loaned him \$150 and promised to exploit his business for him in Memphis, Tenn. Lewis had some little success; organized a company with himself, Guilford Dudley, a note broker, and Otto Stoelker as the company. Stoelker sold his store for quite a sum and put his money into the company. Bad management soon summoned the sheriff to take an interest in the company, who attached everything in sight,

among which was a carload of "Anti-Skeet." By fraud and deception Lewis induced the sheriff to loosen up on the carload of "Anti-Skeet," which Lewis shipped out of the State, and the "Corroco Co." left Tennessee with several judgments against it, and Stoelker, from grief and humiliation, committed suicide.

Lewis came to St. Louis and induced the Moffett-West Drug Co. to exploit the business here under the name of the Corona Co. Results were not forthcoming, and Lewis abandoned the business to the Moffett-West Drug Co., who now owns it.

Lewis then started the Hunyadi Salts Co., taking in W. B. Woodward and other St. Louis men into the enterprise. The Hunyadi Water Co. got after them for infringement of copyright, in court, and Lewis determined to fight, while the others abandoned him, and the result was that Lewis lost his case and owed considerable for printing, advertising, bottles, cartons, and bonds. Some of these debts, on account of street-car advertising, were recently paid to prevent further advertising in the State courts.

Early in 1898 Mr. Lewis started the Diamond Candy Co. in partnership with H. M. Leonard. Orders began to come in, and Lewis sent for Nichols to come and take charge of the business while he went on the road. Nichols took charge, but money failed to come, and after he tired paying bills out of his own pocket, Scudder, Gale & Co. brought suit for unpaid bills, placed Leonard in bankruptcy, and put the Diamond Candy Co. out of business.

Lewis and Nichols then started the "Walk-Easy Foot Powder," a preparation for sweaty feet, and "Anti-Cavity," a tooth powder. They lived on proceeds all summer, but when cold weather approached feet did not sweat so much and the business dried up as well. That concern owed nothing, however, as their credit was below toleration.

In October, 1898, they started the Progressive Watch Co., a plan to sell watches by the endless-chain system, through the medium of a book, for \$1 each. The sales were not plentiful enough, and the plan was changed to the use of cards instead of a book, the cards being 10 cents each. That business prospered, but the Post Office Department stopped the business as "a fraud" about April 1, 1899. They changed the system to what was called a simple instead of a compound system, with a subscription card for a magazine, thinking they would get some mail-order house to take over the list of subscribers. The papers and magazines shrunk from the plan, so, in self-defense, they started the "Winner Magazine." The Progressive Watch Co., which was then called the Mail Order Publishing Co., was merged into the Winner Magazine, and soon thereafter they started the National Installment Co., designed to sell cheap jewelry on the installment plan at fabulous prices, expecting to get cost out of first payment and all after that to be profit. The scheme did not pay, and Lewis and Nichols had some disagreement over the scheme, and they dropped the plan and used the letters received as evidence of the benefits of advertising in the Winner Magazine.

In connection with the Winner Magazine, they then organized the "U. S. Mail Orders Protective Association," designed to collect bad debts, which the trust scheme advertisers passed upon as no good. The business was confined mostly to children who had sent for cheap jewelry, perfume tablets, package blueing, sachet powders, etc., and many were frightened into paying. The money collected passed to the credit of the trust-scheme man, and he was paid by certain advertising space in the Winner, and Lewis and Nichols held the money. The lists furnished were used for sample copies of the Winner. The business soon ceased.

Next came the Lewis Addressing Machine Co. The machine looked fine in theory, but proved valueless in practice, and after spending several thousand dollars in trying to promote it, it failed to accomplish what it was intended for.

Then came the Development & Investment Co. This company was designed as a holding company for all the schemes then on hand or that might be acquired later. It was to hold 51 per cent of all these companies, no stock to be sold; and to interest people they were told that the certificates sold them would participate in all the companies in which the Development & Investment Co. was interested. It was guaranteed to pay 1 per cent per month. The sale of certificates was slow, but all that came went to pay the debts of the Winner Magazine, whose normal condition was deeply in debt. During the summer of 1900 a Mr. Gaeb became interested in the Development & Investment Co., and he and his family paid the first real money the company had. A building was rented at the corner of Walton Avenue and Suburban tracks, and Mr. Gaeb

was placed in charge as a building expert. The company was organized as a balance wheel to take the profits of any company making money and with them pay the debts of those less successful. The plan is somewhat changed since its organization. Lewis himself owned all the stock in the Development & Investment Co. except a few shares given to his wife and to Nichols in order to be eligible to incorporation.

In the early part of 1901 Lewis arranged with B. B. Graham, of the Graham Paper Co., to buy from him the paper for his magazine and promised to buy the Woman's Farm Journal also, and buy what paper was used for that if Graham would secure \$5,000 for him. Graham furnished the \$5,000, and with a portion paid in advance the Woman's Farm Journal was purchased from F. J. Cabot (now connected with all of Lewis's companies and enterprises), and the balance of the \$5,000 was used to pay debts of the Winner Magazine, while Cabot was paid in notes and taken into the business. When the first note to Cabot became due they made a show of paying it by issuing certificates of stock in the Development & Investment Co., and upon which Lewis and Nichols paid him a dividend of 1 per cent per month, as guaranteed, although none of the companies then in the Development & Investment Co. were paying expenses.

Before taking on the Woman's Farm Journal, however, Lewis and Nichols incorporated the American Coin Controller Co., designed to govern the calls on a telephone so that a person could not get the receiver to his ear without first depositing a nickel in the slot. John Baker, a promoter, and Bankers, Foreman, Shepley & McMillan have now an interest in this company, which has never paid expenses, but which has placed some controllers in Sandusky, Ohio, and perhaps a few other towns.

On May 12, 1902, Lewis and Nichols separated. Since then Lewis has organized and incorporated the University Heights Realty Co., Allen Steam Trap Co., Lewis Publishing Co., an electric railroad company, U. S. Fiber Stopper Co., California Vineyards Co., "Camp Lewis," the Bachelor Pneumatic Tube Co., the World's Fair Contest Co., and the Peoples United States Bank, and has increased the amount of stock in the American Coin Controller Co., and the Development & Investment Co., and the Peoples United States Bank.

E. G. Lewis began to advertise "The Postal Bank & Trust Co." in the February, 1904, edition of the Woman's Magazine, page 24, under the heading, "The Postal Bank & Trust Co." In this article, Lewis says, among other misrepresentations:

"Now, I want you to cooperate with us in organizing the greatest bank in the world. A few dollars from each family where the Woman's Magazine goes would mean many millions of dollars of capital and we stand ready to cooperate with you, dollar for dollar, so that you and we own this great bank equally."

Up to the present time Mr. Lewis has not cooperated to the extent of a single dollar of his own money, although the Peoples United States Bank was incorporated November 14, 1904, with \$1,000,000 capital stock, half paid up, and the capital stock was increased to \$2,500,000 on March 15, 1905, with \$2,000,000 capital paid in (the \$1,500,000 increase being full paid stock), yet every dollar paid in for capital stock was paid out of subscriptions for stock which Lewis received from patrons.

In March, 1904, edition of Woman's Magazine, page 16, columns 2 and 3, E. G. Lewis says:

"Your cooperation, each with a small sum, will give the combined strength and resources that will make it (the Postal Bank) one of the greatest organizations of the world. As for me, I have pledged my entire fortune in it and many of my associates are doing the same."

In the April, 1904, edition of the Woman's Magazine, page 14, column 3, is a further advertisement of "The Postal Bank." E. G. Lewis represents in this article:

"That he has mailed 1,500,000 letters to readers of the magazine. That subscriptions to bank stock are pouring in from Maine to California from men and women in every walk of life—bankers, lawyers, physicians, and merchants; that no other bank in the world will have such wide and vast resources as our bank, the people's bank; . . . The Peoples Postal Bank will do its entire business through the mails. The loaning of all its funds will be in the hands of a board or committee composed of three directors from each of the five principal banks and trust companies of St. Louis, . . . thus the resources and experience of the five principal banks, the soundest and safest in the

country, will become available to our bank without maintaining the expense. This alone will make the Peoples Postal Bank the strongest and safest bank in the United States. . . . It will be a national bank in importance and resource; a bank owned by the people themselves and paying its earnings to the people."

In the edition of *Woman's Magazine* for May, 1904, page 22, columns 2 and 3, the advertising of The Postal Bank is continued over the signature of E. G. Lewis. Among other things, he says:

"Subscriptions to the stock have poured in by the tens of thousands of dollars . . . Our bank will open with over 100,000 stockholders and depositors, . . . stock will advance to several times par the day the charter is granted. . . . There are a few pages of the subscription books still open. They will close with a bang in a few weeks. . . . Don't stop to think about it. Act! Send what you can spare—\$1, \$50, or \$500. One dollar is the limit one way, and \$500 the other, and there isn't anybody living that can get over the limit. Under our plan we will have placed at our disposal the entire knowledge and resources of the greatest banks in St. Louis, without having to foot their bills or maintain their establishments. . . . There isn't any promoter's stock in the Postal Bank. . . . No body of men can secure control of the Postal Bank, no matter what their worth. All the stockholders in North America couldn't collect together enough of the stock to elect a single director. This is the people's bank and will remain their bank; its earnings will go to them and to those whose money is deposited in it. I ask you to join me with from \$1 to \$500. I have pledged myself to put up dollar for dollar with you to the utmost limits of my private fortune. I would rather be president of the *Woman's Magazine* and the Postal Bank than President of the United States."

In the June, 1904, edition of the *Woman's Magazine*, page 11, columns 2, 3, and 4, after dilating and enlarging on the safety, security, and prosperity of banking in general, and holding out reductive and brilliant prospects for all who get into the Postal Bank at its organization as participants in the greatest bank in the world and sharer of its enormous profits, which will bring wealth in a short time, E. G. Lewis says, among other things:

"The merchandise of a bank is money. . . . A bank stands for all that is strongest. . . . Those who own its stock are secured by its cash capital, and so closely is it watched by the Government and State that it is the safest form of investment, and the stock of a good bank commands a high premium though it pays a small rate of dividend. . . . Of all the people in the world who should be permitted to purchase the stock of a great bank at par, those of moderate means, who can ill afford to lose the little money they have, should come first. . . . It stands like a rock of Gibraltar between them and the thousands of stock speculators and swindling schemes holding out hopes of sudden riches . . . so free from the control of any body of wealthy speculators, so fearless and so strong that it could send out warning . . . and prevent them being taken in and defrauded in a thousand schemes. . . . Like my magazine, the great number of people working with me is what will make it the most powerful, prosperous, and profitable bank in this country. What that means a single instance will show. Could you have joined in the organization of the Fifth Avenue Bank of New York a few years ago and purchased \$500 of its stock at par, as you can now do in our bank, you could to-day sell that \$500 of stock for \$18,025, and would have an income of \$500 a year from it. . . . Over 20,000 subscriptions to the stock have already been received (May 14, 1904), and the success of the plan is assured."

In the July, 1904, number of *Woman's Magazine*, two whole pages, 18 and 19, are devoted to exploiting "The Peoples Mail Bank." The efficient promoter, E. G. Lewis, herein discloses himself as a profuse writer, a shrewd promoter, a genius of more than inventive tact, and pledges his private fortune, the Lewis Publishing Co., his other holdings in wildcat schemes, and his sacred honor to the success of this enterprise in the name and for the love of the people. Among other things, he says:

"Since my article appeared in our last issue, over 10,000 subscriptions to the par stock of our bank have been received. . . . Many of these from the fore-
was intkers and merchants in the country. Once the charter is granted, no certificate can be purchased . . . unless for several times par. . . . Over 200 Magazine, vinkers have subscribed for the limit, \$500. No bank ever started 1800 a Mr. favorable conditions. . . . The capital stock will be \$5,000,000, held he and his fa.
rented at the .

by over 100,000 stockholders. . . . I am arranging to turn nearly everything I have in cash, outside of my stockholding in my great publishing business, and expect to subscribe for at least \$1,000,000 of the stock of our bank. I must pay cash, exactly the same as you do, for my stock, as there is no "promoter's" stock in this bank, but when it opens its doors there will be a dollar in cash in my vaults for every dollar of capital stock, and every dollar of my profit will go to increase the reserve of the bank each year. . . . Already the enormous success of the bank has been assured. One banker of Chicago offered to place \$1,000,000 of our stock in a single day. A San Francisco banker subscribed for \$100,000 of the stock, but was permitted to have only \$500 of stock. . . . Two houses in Chicago did \$50,000,000 of merchandizing through the mails in 1903, and mail-order business for United States now greatly exceeds \$1,000,000,000 per annum. . . . No bank but this, fixed to handle that business (and then proceeds to show how this bank will handle it, and at the same time draw 3 per cent interest on every \$80,000,000 out of every \$100,000,000 used in the business). Such a bank assumes great responsibility. It becomes the custodian of the life savings of a vast number of families spread over all quarters of the country and even in foreign countries. . . . It will become the confidant and advisor of a million families and depositors who have never before had such a financial institution to advise them and to direct their investments into safe channels. It will be the financial guardian of a million homes. . . .

"First, the officers must be men of wide experience in the mail-order field, and the people dealt with . . . and the officers of the Lewis Publishing Co., who have already developed the largest and most successful business along similar lines, are therefore selected (without a voice of but one stockholder), and have pledged their fortunes to it and have staked the very life of the Woman's Magazine and the Woman's Farm Journal on it.

"Second, the board of directors will be composed of men selected not because of their banking experience or their connection with other banks or trust companies, but largely because they have no such experience or entanglements. I am selecting seven strong men who have demonstrated abilities, built up large enterprises, amassed comfortable fortunes, and who can not be bought, etc. . . . The officers, to be president, 3 vice presidents, treasurer and secretary, 7 directors, and board of 15 advisors, composed of 3 directors from each of 5 banks.

"Earnings and expenses.—The expense to be 15 to 20 per cent less than other banks, because business done by mail, and officers to receive a small per cent of net profits. If earnings equal proportion of business done, our net profit available for dividends and reserve would then be five times as much. Our earnings should greatly exceed those of any other bank in existence. . . . From certified check system the earnings will be nearly a quarter million dollars per year without having to pay any interest on it. . . . From the deposits the bank will make it so strong, its advice will be sought in bond issues, and holding the confidence of a million investors, and an organization and personnel such as to be an absolute guaranty of the honesty and wisdom of its advice, would be strong enough to immediately insure the success of any bond issue.

"Our bank will not be a private bank, but a State or National bank. Its stockholders can not be assessed or become liable. The officers and directors can not borrow or use a dollar of its funds. I who am arranging my personal affairs so as to take and pay for a million dollars of stock myself, and who will be its president, could not lend myself a single dollar of the bank's funds. In addition to this I am pledging my own great stockholdings to you for your additional safety and profit. Every dollar that my stock earns goes into the reserve of the bank, adding to the value of your stock.

"No other bank has such a field or is so strongly organized. You are the underwriters. You are the organizers. You hold the ground floor of this bank. The enormous profit made from getting in at the organization and becoming charter members and securing the stock at par, goes this time into a hundred thousand homes. Will your home be one of them?"

Relative to foregoing, it might be proper to say here that the Peoples United States Bank was chartered for \$1,000,000 capital stock—half paid in—November 14, 1904, every dollar of which was paid out of subscriptions received by E. G. Lewis. On March 15, 1905, this capital stock was increased to \$2,500,000, and the increase of \$1,500,000 was entirely paid in out of subscriptions. March 18, 1905, and to make whole those subscriptions which had partly been used

by Lewis in other business, the sum of \$196,000 was borrowed from the bank on March 15, 1905, by Lewis and his directors that could not be bought.

In the August, 1904, edition of the Woman's Magazine, the whole of pages 12 and 13, under the heading "The Peoples Mail Bank," and under date line of July 14, 1904, are used in advertising and exploiting the bank. From that advertisement the following extracts are quoted:

"I now have registered on the books nearly 40,000 stockholders in the Postal Bank. . . . The capital of \$5,000,000 will probably be three or four times oversubscribed. I am now cutting down the great subscriptions of wealthy men and assigning the stock to those who need this opportunity and have never before had one like it. . . . I know now, and almost every banker here knows, that the stock of our bank will command such a high premium that each stockholder will have more than doubled his money the day the charter is granted. . . . Whatever you do, do not let the opportunity slip by you to get in on the organization of what will be the strongest and most profitable banking institution in America. It is the first and only one you will ever get."

The remainder of the article is devoted to explaining how the bank and its stockholders will soon become affluent by use of the certified-check system, which "would mean a profit of from a quarter of a million to a third of a million dollars per year to the stockholders of the Peoples Mail Bank from its certified-check system alone," and telling how the other big banks of the country would be working for and piling up money for the Peoples Bank without a cent of expense to it, and then quoting the letters of 11 supposed business men, supporting theoretically this "marvelous enterprise."

E. G. Lewis occupies all of page 20 and one-half of page 21 of the Woman's Magazine for September, 1904, under heading "The Peoples Mail Bank," under date line of August 6, 1904, in advertising the bank further along the lines appearing in the July and August numbers of the magazine. Suffice it for our purpose to quote as follows:

"I am carrying through for you an organization that will make it the safest and soundest, as well as the most profitable, bank in America. . . . First, the bank is governed by officers and directors, but they can not loan its funds to anyone and can not borrow from it themselves. Second, by our system its loans are passed on and the greatest part of them, as I will explain, are guaranteed and secured by other banks with the best collateral. Third, the entire capital of \$5,000,000 will be invested exclusively in Government and State bonds and the most gilt-edged securities, sacrificing the higher interest to the absolute safety. Fourth, owing to the wide distribution of its depositors it is not subject to the danger of a run, the terror of all banking institutions. Fifth, my own stock holdings of a million dollars (one-fifth of the capital) are trusted so that their entire earnings go into the reserve fund of the bank, thereby adding each year greatly to the value of your stock holdings. I hold the office of president only so long as you vote for me each year; and as my money is tied up forever, and in the event of my losing the presidency I can not take my stock with me, and if I die my stock is voted by all the other stockholders pro rata. (If you have \$500 of the stock and I die, you would then vote \$600, or one-fifth more.) No man on earth can ever get control of our bank, no matter what his wealth, without the consent of a hundred thousand families.

"Here then is the organization. One man at the head. Next to him seven men specially selected to advise and help him; these are elected new each year. Then five or more great banks guaranteeing the safety of our funds, the capital standing always as a great bulwark, sound as the Government itself, because invested in Government bonds."

Relative to foregoing, let us state here that on March 18, 1905, two millions of the two and a half capital stock was paid in out of subscriptions to the capital stock, and not a single dollar of E. G. Lewis's money had gone into the bank, and he told Bank Examiners Cook and Nichols, April 3, 1905, that he had not paid 1 cent of the capital stock out of his individual funds, and that it was a mistake to have issued 915 shares of capital stock in his name, and he took a pen and canceled the certificate for 915 shares in their presence; but later in the same day, after consultation with some of the directors "who were not embarrassed with experience or knowledge of banking," he claimed that two shares of the stock should have been issued to him, otherwise he could not be a director or president, and he accordingly issued two shares of stock to himself.

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On April 8, 1905, in reply to a question propounded by Inspector Sullivan, he said to Inspectors Fulton, Stice, and Sullivan that it was a mistake to have canceled the certificate for 915 shares of stock made by the bank examiners, and then, when asked what had become of the other 9,000 shares of the original capital stock, Lewis claimed that he was entitled to 9,915 shares of the capital stock, and said he had paid in \$495,750 of his own funds of the original \$500,000 paid in. The truth is that he had not paid a cent, and his charter was secured on the false statement that there was paid in by him \$495,750, when, in fact, it was paid in by subscribers.

In the Woman's Magazine for October, 1904, pages 14 and 15 are devoted entirely to the exploiting of the People's Mail Bank by Lewis, over his signature, endeavoring to show how profitable the bank stock would be, and specifying how profits could be made and other banks made to work for them without cost, and saying that over 50,000 subscriptions had been received, and soliciting that many more to get in on the ground floor of the organization.

In the Woman's Magazine for November, 1904, under the heading "The People's Mail Bank," under date of October 1, 1904, E. G. Lewis devoted over four columns on pages 30 and 31 to advertising the bank and soliciting additional subscriptions, though he said then that over 60,000 had subscribed to the stock and that he could have closed the books over 30 days ago with the \$5,000,000 capital stock oversubscribed.

In the Woman's Magazine for December, 1904, E. G. Lewis devotes columns 2 and 3, page 22, and most of columns 2 and 3, page 23, to the advertisement of the bank and soliciting additional subscriptions to its capital stock. He announces that the papers for charter are in hands of State officers and before next issue the charter will be granted, and allotments of stock made December 24, 1904. He urges five means by which the bank will make money:

1. The certified-check system.
2. Profit-sharing time certificates.
3. The legal department, by which all patrons get advice for \$2.
4. Safety deposit vaults at \$2 per year.
5. Trust department, whereby bank acts as trustee and executor for wills and estates.

He again pledges his honor, his property, and the Lewis Publishing Co., and appeals to the help of God to carry on this work, making the broadest and most philanthropic appeals to the people to stand by him in honesty and sincerity, and, among other things, says:

"The bank has first been chartered with \$1,000,000, the entire stock (with the exception of a few shares held by the gentlemen who signed the charter with me) being held by me. This enables me to hold the necessary stockholders' meetings and pass the by-laws to unanimous vote. Once these matters have been fixed and voted upon in this way, the capital will be increased, and on December 24 (Christmas eve) the stock will be allotted to the enormous list of subscribers and so scattered in small amounts throughout the entire Nation that no man, no matter what his wealth, or any combination of men, can ever change the purpose for which this great bank has been organized, or ever divert its funds from the absolutely safe lines that have been laid down without first obtaining the consent of nearly 70,000 different stockholders, an almost impossible thing if evil was intended. Here is at least a bank of the people and for the people. In any other bank in this Nation a few men, holding the majority of the stock, run matters and make or unmake its rules of business to suit their own ends."

In the Woman's Magazine for January, 1905, E. G. Lewis, as president of the Peoples United States Bank, devotes over 6 columns on pages 22 and 23, advertising the bank and begging for more money in shape of stock and deposits. He announces the bank organized November 14, 1904, under date of December 3, 1904, and that there are over 80,000 individual subscriptions to the capital stock, and tells the readers if they do not receive notice "that your subscription was refused or cut down, the stock will be allotted to you." The most of the article is devoted to how the bank will make profits, the erection of a new bank building, how to save money by sending it to the bank, and generally advertising E. G. Lewis as the greatest benefactor the world has ever known or is likely to hear of in the future. This article is dated December 3, 1904. That is the first day on which the bank opened its books

(although organized November 14, 1904). The first day's business is shown below:

Resources.	Amount.	Liabilities.	Amount.
Bond account.....	\$2,900.00	Capital stock.....	\$500,000.00
Bills discounted.....	30,544.95	Interest account.....	566.09
First National Bank, Lafayette, Ind.	7,500.00	E. G. Lewis, special account.....	223,410.21
Capital National Bank.....	7,500.00	5-year certificates.....	100.00
Franklin Bank.....	3,000.00	Savings department:	
National Park Bank.....	25,000.00	Arkansas.....	10.00
Building account.....	10,000.00	California.....	171.15
Missouri Trust Co. (checking).....	40,420.42	Indiana.....	104.53
Exchange account.....	1.90	Massachusetts.....	13.00
Due from banks, certificates of deposit.	606,965.09	Missouri.....	564.80
Old Bank, Evansville, Ind.	2,000.00	Nebraska.....	2.00
First National, Amboy, Ill.	270.00	New York.....	25.00
Citizens, Ashland, Iowa.	300.00	North Carolina.....	2.90
Cash.....	4,315.97	Ohio.....	100.00
		Pennsylvania.....	1.00
		Canada.....	5.00
		Commercial deposits.....	3,888.95
		Demand subscriptions.....	14,425.33
Total resources.....	743,389.33	Total liabilities.....	743,389.33

On April 8, 1905, E. G. Lewis explained to Inspectors Fulton, Sullivan, and Stice, that the "E. G. Lewis special account" noted above contained the subscriptions received by him for capital stock, and "demand subscriptions" were also part of same receipts.

A careful checking of the subscription books of E. G. Lewis on April 10 and 11, 1905, by Inspectors Sullivan and Stice, assisted by Clerks Byler, McBirney, Fawcett, Miller, Boland, and Eltman showed that the books show receipts of subscriptions to capital stock:

Up to Nov. 14, 1904 (inclusive).....	\$1,219,218.92
Up to Dec. 3, 1904 (inclusive).....	1,560,092.75
Up to Mar. 14, 1905 (inclusive).....	2,111,090.67
Up to Mar. 15, 1905 (inclusive).....	2,111,926.67
Up to Mar. 23, 1905 (inclusive).....	2,124,539.00

March 23, 1905, was the latest date then entered upon the subscription records. Some of the entries on subscription records were marked "canceled," others had a line drawn through them, others were marked "duplicate," etc., and a careful computation of all these by Clerks Byler and McBirney, aggregated these deductions or credits as \$204,903.65, which being deducted, left \$1,919,545.35 as net receipts.

E. G. Lewis paid the \$500,000 (half-paid capital stock of \$1,000,000), November 14, 1904, out of the E. G. Lewis special account. On December 3, 1904 (first day bank books were opened) E. G. Lewis' special account was then and subsequently entered on bank books as follows:

E. G. Lewis, special account.

Date.	Special account.	Demand subscriptions. ¹
1904.		
Dec. 3.....	\$223,410.21	\$14,425.00
5.....	326,413.21	28,464.00
6.....	333,033.70	29,499.00
7.....	334,638.70	29,701.00
9.....	334,739.70	30,596.00
13.....	334,739.70	32,146.00
14, no change.		
20.....	640,259.66	42,001.50
24.....	666,839.66	42,001.50
31.....	744,355.06	43,766.50
1905.		
Dec.	1,125,248.66	46,074.50
were	1,129,507.43	46,074.50
that to	1,503,745.90	
could no	1,508,826.40	
and a	1,514,403.65	
he and hi	16,831.81	
rented at		

¹ Demand subscriptions transferred to "special account."

It will be observed that on March 15, 1905, this account was increased from \$1,129,507.43 (for the day previous when we made some investigation of the bank) to \$1,503,745.90. This increase was made up by the items of \$46,074.50 transferred from the "demand subscriptions" account of E. G. Lewis and \$123,309.44 transferred from the "collection account" of E. G. Lewis, and the personal note of E. G. Lewis for \$50,000, and the note of E. G. Lewis, E. W. Thompson, F. J. Cabot, A. P. Coakley, and G. A. Arbogast for \$146,375.63 (being the note of the president and five directors of the bank), with vouchers for the charges and expense of promotion of the bank through the Lewis Publishing Co.

The "demand subscriptions" consisted of the amount received from bankers and others by Lewis as subscriptions for stock, but the account was kept separate from the regular subscription books.

The "collection account" consisted of such remittances for stock as Lewis had actually received from those who subscribed for stock and had paid part of one share in cash and had given notes for the remainder of stock subscribed for. On March 15, 1905, Lewis had collected in cash from this source \$128,042.44, but transferred to his "special account" only \$123,309.57, holding the remainder still in the "collection account."

The account of E. G. Lewis, in connection with funds received and disbursed in this bank transaction, when properly stated for March 15, would read as follows:

	Received.		Disbursed.
Subscriptions for stock.....	\$2, 114, 926. 67	Paid capital stock.....	\$500, 000. 00
Demand subscriptions.....	46, 074. 50	Paid capital stock.....	1, 500, 000. 00
Collection subscriptions.....	128, 042. 44	Deductions claimed for cancellations, etc.....	204, 993. 65
Total.....	2, 289, 043. 61	Total.....	2, 204, 993. 65
Due to balance account.....	84, 049. 96		

The item of \$204,993.65 is unverified by us, and it is our opinion that this amount is overstated. We called on Mr. Lewis for vouchers showing these disbursements, but he refused to permit a personal verification at that time, although he proposed to produce this evidence at a later date. The two items of demand and collection subscriptions are also unverified, and it will be understood that this statement is made up from figures furnished by Mr. Lewis.

This statement shows that E. G. Lewis has actually paid every cent of the \$2,000,000 capital stock which has been paid in out of subscriptions which he received, and that not one dollar of his individual money has been used in the transaction.

It further shows that E. G. Lewis had used \$196,375.63, which was received from the dear people as subscriptions for stock in the bank, for his own individual purposes—practically embezzled that amount from the trust funds deposited with him—and only made it good in notes when he found it necessary to pay in the capital stock without encroaching on his "private fortune, his sacred honor, and the Lewis Publishing Co.," which had been pledged to put up dollar for dollar with the subscribers.

The note for \$50,000 of E. G. Lewis, referred to, is payable to the Development and Investment Co. (another name for E. G. Lewis), and is dated December 12, 1904, and was turned into the bank March 15, 1905, and the amount of \$50,000 was credited to E. G. Lewis's special account, the subscription account. Accompanying the note was a written instrument in Lewis's handwriting, reading as follows:

"For and in consideration of the advancing to me of the sum of \$50,000, the receipt of which is hereby acknowledged, I hereby sell, assign, and transfer all my right, title, and interest in and to my residence and 5 acres of land and improvements, located on southwest corner of the University Heights subdivision, until the completion of a clear title to the same, when a first-mortgage deed of trust is to be executed by me in the place of this instrument to the Development and Investment Co., or its assigns.

"Witness:

"E. G. LEWIS.

"Assigned to the Peoples United States Bank.

"DEVELOPMENT & IMPROVEMENT CO.,
"E. G. LEWIS, President."

The collateral to secure the \$50,000 note is an agreement on the part of Lewis to execute a mortgage when he obtains a title. If he never takes a title the security is worthless. The other note is unsecured, but it is alleged that this will be paid when the item charged to organization, \$146,375.63, is allowed by the secretary of state, then it will be paid from the earnings of the bank, or, in other words, by the stockholders. An affidavit was taken from Putnam as to this transaction (exhibit —) from which it will be seen that when these notes were placed in the bank as an asset on March 15, 1905, that no money was paid by the bank; hence they were placed there to cover money previously used by Lewis, so that, in fact, he was short, according to his own records, on March 14, 1905, \$196,375.63.

"The note referred to for \$146,375.63 is accompanied by bills and vouchers of the Lewis Publishing Co. for expenses of promoting and advertising the bank. The items of the bills, so E. G. Lewis informed us, are: Postage, \$53,857.40; pay roll, \$22,948.68; advertising, \$63,338.27; sundry expenses, stationery, and printing, \$6,231.28. This note is signed by E. G. Lewis, E. W. Thompson, F. J. Cabot, A. P. Coakley, and G. A. Arbogast, the five and only directors of the Peoples United States Bank."

Of the balance of \$84,049.96 shown to be due stockholders on March 15, 1905, in the table of receipts and disbursements on page 14 of this report, Lewis had on that day a balance of \$3,745.90 in his special account and \$4,733 in his "collection account," leaving a balance of \$75,571.06 of the subscription trust fund still unaccounted for, and which Lewis had used in other concerns.

We invite especial attention to the fact that we visited the bank and the Lewis Publishing Co. on March 14, 1905, made as much investigation into the affairs of each as time would permit, and counted the cash on hand in each, and listed credits in other banks of each, and that on the following day, March 15, the day the bank was allowed by secretary of state to increase the capital stock of the bank from \$1,000,000 to \$2,500,000, the special account of E. G. Lewis with the bank was increased \$374,238.47 by the shifting of funds, deposit of notes, and the covering into the bank of moneys used by Lewis were all consummated, and, as we believe, in consequence of our investigation and with the design of deceiving us with reference to the true state of the accounts.

On April 8, 1905, E. G. Lewis stated positively to Inspectors Fulton, Sullivan, and Stice that of the original capital stock paid in—\$500,000—he himself had paid in \$495,750, and the other 17 persons who were named as organizers of the bank had paid in \$4,250. If this statement were true, which in our opinion it is not, then on March 15, 1905, E. G. Lewis was an embezzler of \$575,571.06 of the funds previously remitted to him for stock subscriptions to the bank.

In this connection, permit us to revert to the literature sent through the mail in which Lewis claimed to be paying all the expenses of promoting this bank, and that he was putting up dollar for dollar with all the subscribers for stock in the bank, and to say further, that in the bookkeeping department of the Lewis Publishing Co., on April 8, 1905, we found a record showing that E. G. Lewis had drawn a salary from the bank from July, 1904, to February, 1905, inclusive, amounting to \$16,598.55, the items of which are as follows:

July, 1904	\$1, 534. 95
August, 1904	1, 851. 02
September, 1904	1, 935. 26
October, 1904	2, 343. 91
November, 1904	2, 107. 31
December, 1904	3, 181. 85
January, 1905	1, 611. 25
February, 1905	2, 033. 00
Total	16, 598. 55

" ORGANIZATION OF THE PEOPLES UNITED STATES BANK.

"On November 14, 1904, a charter was granted to the Peoples United States Bank, under the laws of the State of Missouri by the secretary of state.

"The amount of the capital stock of said bank was \$1,000,000, divided into 10,000 shares of the par value of \$100 each, and all of said capital stock has been bona fide subscribed and one-half thereof actually paid up in lawful money of the United States and is in the custody of the persons named herein as the first board of directors.

"The names and places of residence of the several shareholders and the number of shares subscribed by each, are as follows:

Names.	Residence	Number of shares subscribed.
Edward G. Lewis.....	University Heights, St. Louis, Mo.....	9,915
Aug. Schlafly.....	St. Louis, Mo.....	5
Theo. F. Meyer.....	do.....	5
F. J. Carlisle.....	do.....	5
F. J. Cabot.....	do.....	5
Edward Dickinson.....	Kansas City, Mo.....	5
W. Lee Travers.....	St. Louis, Mo.....	5
James F. Coyle.....	do.....	5
Geo. H. Augustine.....	do.....	5
A. P. Coakley.....	do.....	5
A. L. Thomas.....	Chicago, Ill.....	5
B. B. Graham.....	St. Louis, Mo.....	5
Pinckney French.....	do.....	5
Geo. G. Edwards.....	Bridgeport, Conn.....	5
Porter White.....	St. Louis, Mo.....	5
H. L. Kramer.....	Kramer, Ind.....	5
Eugene W. Thompson.....	St. Louis, Mo.....	5
Guy A. Arbogast.....	do.....	5

"The directors of said corporation are five in number, and the names of said directors agreed upon for the first year are as follows:

"Edward G. Lewis, Frank J. Cabot, Augustine P. Coakley, Eugene W. Thompson, and Guy A. Arbogast."

"Edward G. Lewis is president of Woman's Magazine, or Lewis Publishing Co., at a salary of \$15,000 a year.

"Frank J. Cabot is editor of Woman's Magazine, at a salary of \$4,000 a year, and editor of Woman's Farm Journal, at a salary of \$2,000 a year.

"Augustine P. Coakley is advertising manager of Lewis Publishing Co., salary

"Eugene W. Thompson is an employee of Lewis Publishing Co., at a salary of _____.

"Guy A. Arbogast is an employee of Lewis Publishing Co., at a salary of _____.

"On March 15, 1905, the capital stock was increased from \$1,000,000 to \$2,500,000. On April 8, 1905, Edward G. Lewis stated that he had applied to the secretary of state for an increase of the capital stock of the bank to \$3,000,000, or for \$500,000 more."

In addition to advertising this bank in the Woman's Magazine and Woman's Farm Journal, three letters, herewith, Nos. 1, 2, and 3, were mailed by E. G. Lewis to hundreds of thousands of people between March 15, 1904, and December 15, 1904, setting forth the advantages of the bank and holding out inducements for subscriptions to the capital stock, and soliciting subscriptions from \$1 upward to \$500, and telling them, "Had you come with me four years ago, at the start, with only \$5, you would to-day be worth \$5,000 and have an income of \$1,000 a year," and that "For every dollar that my readers put into this bank as capital I will put \$1 myself to the full extent of my own private fortune."

In the third letter (none dated) he says:

"It is to become your bank, and the bank that will enable you who become its charter members to deal directly with the vast moneyed interests of the world and to command from them your share of the wealth and prosperity of the greatest Nation on earth. . . . The stock of a great bank is, next to Government bonds, the safest, most profitable, and most sought after class of securities in existence. That a few hundred dollars invested in the stock of any of a hundred of the leading banks in this country at par is to-day worth from 500 to 4,000 times what those who got in on it as charter members paid for it."

Keeping in mind what is before reported, let us turn to the Woman's Magazine for February, 1905, where all of page 30 and nearly half of page 31, is devoted to further exploitation of this bank. Under date of January 3, 1905, he states:

"To-day, 10 days after the closing of the subscription books (Dec. 24), I am just staggering out from under an avalanche of subscriptions by mail and telegraph that came in the last few days before closing the books. Already

over 90,000 individual subscriptions to the capital stock of the bank have been recorded. The entire \$5,000,000 is subscribed, and what the total subscription will amount to I can not yet tell. . . . The legal advisors of the bank have advised us that the regular legal notice of the increase of the capital to the \$5,000,000 be advertised in the local papers for 60 days instead of incorporating a waiver of notice as was originally planned. This delays the delivery of the stock certificates until March 4, although they are now being made out. . . . This notice is now running in the Watchman Advocate, of Clayton, Mo., and the St. Louis Star. On March 4 the meeting is to be held to formally increase the capital. In the meantime, as fast as they can be handled, the formal receipts will be called in and the stock certificates made out in their place. All stock certificates will bear the same date. . . . I beg of those of you who receive this stock to hold it tight. I believe in a few years that it will have become the most sought after and highest priced bank stock in America. Already premiums of 2 for 1 (\$2 for \$1) have been freely offered for large blocks of it. Shortly after March 4 it will be regularly listed in the stock exchange. Remember, all this stock is in your hands. No man or woman will have over \$500 of it unless they obtain it by deliberate falsehood. I have pledged my fortune, my great publishing business, and the best years of my life to come, to the success of this bank. It is in your hands. . . .

"No man could read the thousands upon thousands of letters breathing confidence and good wishes that I have received from you and not be a bigger, broader, and better man for it. That is my profit, and the only profit I want. . . .

"On December 24, the subscription books closed with about 90,000 subscriptions to the stock in my hands. . . .

"Be patient. I have carried through in the past few months the organization of one of the greatest corporations in the world. I have sent out over 3,000,000 letters. I have personally answered tens of thousands more. . . . I do not think there is any doubt but that we will have nearly, if not fully, 100,000 stockholders when the mail is all opened. . . .

"I have subscribed for \$2,000,000 of the stock of our bank myself. Instead of allotting it on the large lists of whole wealthy families. One million dollars of the stock I intend to retain and so trustee it that its earnings shall go into the reserve of the bank each year in order to more rapidly double the value of the stock of other stockholders, and so it will forever remain as a barrier to any man or body of men who, attracted by the wealth and prosperity of our bank at some future day, should try to buy up enough of the stock to give them a large vote in its affairs. . . . With my million dollars of the stock trusted, and in the event of my death voted by the other stockholders, it would be practically impossible. Now, the other million of my subscription I have divided into two parts of half a million dollars each. One part I shall allot and sell at par to those of you who could not subscribe for it and pay for it all at once. . . . The other half million dollars I shall hold to be placed exclusively with the officers of other banks and with strong men who can be a source of assistance, counsel, and mutual benefit to our bank."

The remainder of this article is devoted to showing how great the profits of the bank are to be, and encouraging savings deposits and the "profit-sharing" certificates of the bank, and still soliciting additions to the subscriptions of capital stock.

In the March, 1905, Woman's Magazine E. G. Lewis devotes about five columns on pages 30 and 31 to advertising and exploiting the People's United States Bank, telling how the bank is to make money for its stockholders, and to be the most profitable bank in existence, and saying that through the fees coming into the legal department of the bank it will pay its expenses; that the bank will be run cheaper than other banks, not costing over 15 per cent of others, and generally trying to inspire confidence in himself as its head. The savings deposit, the certified-check system, the profit-sharing certificate system, and the expected income and profits are largely paraded, and solicitation is made for deposits. The Bank Reporter is promised, which is to be the bank organ and expositor in future. The impression sought to be made is that Lewis became rich enough through the Lewis Publishing Co., and will make everybody else rich, or at least comfortable, who will join this enterprise.

In the April number of the Woman's Magazine nearly four columns on pages 30 and 31 are devoted to the bank, along lines mentioned in previous issues and making a plea to have children save and deposit with the bank. He gives notice that at the meeting of the stockholders March 4, 1905, the capital stock was increased, but does not disclose how much, promising detail in No. 2 of the Bank Reporter.

In March, 1905, volume 1, No. 1, of the Bank Reporter was issued and sent through the mails as third-class matter. No. 2 of Bank Reporter was issued and sent through the mail in April, 1905. Attention is invited to Bank Reporter, No. 1 and No. 2, volume 1, herewith.

In advertising and exploiting the Peoples' United States Bank, and in trying to convince the public that the bank would prove a profitable and advantageous investment to the stockholders from the day the bank was organized, E. G. Lewis kept prominently before the public, and particularly the readers of the Woman's Magazine and the Woman's Farm Journal, the building up of these two publications from a capital of \$1.25 in the year 1900 and the enormous success which the Lewis Publishing Co. had attained in these four years, arising chiefly from the inventive genius, the organizing ability, tact, and shrewdness of E. G. Lewis, and arguing from this standpoint that the bank, engineered and promoted and managed by this same world astonisher, would bring untold wealth, prosperity, financial power, and great riches to any person who would invest in same, even to the extent of \$1, promising himself to put in dollar for dollar for every dollar put in by all his patrons. He claimed that the Lewis Publishing Co. is now earning an annual profit of from one-quarter of a million to one-third of a million dollars a year, and had erected the "Great office building of the Woman's Magazine and Woman's Farm Journal for cash, without mortgage or lien, at a cost of over a half million dollars, in five years from a start of \$1.25, showing what can be done, if enough people combine to do it, even at 10 cents per year each." (See first page of Banking by Mail, June, 1904.)

We invite attention to the statement of E. G. Lewis in June number of the Woman's Magazine, in first column, page 10:

"The great publishing house owned by the Woman's Magazine was built without mortgage or loan, and about it are 85 acres of the finest residence property in St. Louis, which we have laid out into a beautiful private residence park, where the officers of the company are building their own homes and where, in one part, many beautiful little homes will be built by the company for its employees, to be paid for in small monthly payments."

Also, in same column:

"The finest and largest publishing plant in the world has just been completed at a cost of over \$600,000, and nearly 500 people are employed by these two papers in their production, which means that about 300 families earn their daily bread and butter in producing these papers. Fifteen carloads of paper and 4 tons (8,000 pounds) of printing ink are consumed in producing a single issue of the Woman's Magazine."

Mr. E. G. Lewis furnished us the following statement of the Lewis Publishing Co. for March 14, 1905:

Assets.	Amount.	Liabilities.	Amount.
The Woman's Magazine.....	\$1,000,000.00	Capital stock.....	\$1,200,000.00
The Woman's Farm Journal.....	250,000.00	Due banks on time loans.....	115,000.00
Cash.....	16,797.50	Notes payable for supplies.....	97,000.00
Accounts receivable.....	222,477.26	Special loans, account of construction, payable in three years, at 6 per cent.....	381,592.71
Bills.....	3,270.87		
Stocks and bonds account.....	1,000.00		
Building.....	405,328.20		
Machinery.....	191,937.25		
Furniture and fixtures.....	28,159.19		
Real estate.....	52,167.00		
Branch post-office equipment.....	1,256.00		
Railroad trackage.....	6,035.16		
Rolling stock.....	12,301.08		
Composing room.....	1,903.38		
Improvement account.....	8,693.56	Surplus.....	407,733.74
Total.....	2,201,326.45	Total.....	2,201,326.45

Analysis of the assets given above shows that \$1,250,000 thereof consists of the franchise or privilege of mailing the two publications as second-class matter at the rate of 1 cent per pound. This franchise only one of the publications possesses. The Woman's Magazine is being mailed on a temporary permit of the postmaster at St. Louis, Mo., on an application filed in 1899 (three years before the Woman's Magazine had existence) for same privilege to the Winner Magazine, made by the Mail Order Publishing Co. Hence these are improper

assets and do not exist in fact. Deduct this amount from the assets and, without questioning the remaining assets, the total assets would be \$951,326.45. Pay off the liabilities due banks, notes for supplies, and special loans (with which the "great office" was built), aggregating \$593,592.71, out of the assets, and there would remain only \$357,733.74, and the surplus would have been absorbed and the capital stock impaired.

This analysis shows that the Lewis Publishing Co. did not build its "great office" building with "cash and without mortgage or loan," and clearly indicates that its great earning power is far below "a quarter to a third of a million dollars per annum." The fact is, the Lewis Publishing Co. has long been doing business on credit, and so has every other company with which E. G. Lewis has been associated. The only companies with which he has been connected which have been able to meet expenses, independent of assistance, are the World's Fair Contest Co. (a lottery, pure and simple), and the Lewis Publishing Co., during the year 1904, and both these companies did business on borrowed money. Lewis states that he was enabled to build up the Lewis Publishing Co. from a capital of \$1.25 to its present earning power of from a quarter to one-third of a million dollars a year by borrowing at needed times approximately \$2,000,000. (See his answer to question 28, dated April 4, 1905.) All the other companies were in debt in 1904 and are in debt to-day; hence the necessity for organizing the Peoples United States Bank in order to have ready cash from which to supply the harassing needs of the struggling companies. The actual earning power of the Lewis Publishing Co. is certainly much less than he attributes to it, but in his system of shifting funds from one company to another, making the strong help the weak, it is difficult to determine what its earning power really is.

As an example of the last statement on April 8, 1905, we requested Mr. Lewis to furnish us an itemized list of receipts and expenditures of the Lewis Publishing Co. for the first quarter of 1905. He directed Will Ahrens, book-keeper, to furnish such statement and he furnished a statement for the entire quarter without separating the months. The totals were as follows:

January, February, and March, 1905:		Earnings.
Receipts from advertising.....		\$206, 202. 03
Receipts from subscriptions.....		21, 567. 63
Receipts from building rent.....		750. 00
Total receipts.....		228, 519. 66
Expenses.....		141, 903. 27
Net earnings.....		86, 616. 39

We then requested that this statement embrace receipts and expenses for each month separately, and he furnished the following:

	January.	February.	March.
Receipts from advertising.....	\$72, 775. 07	\$72, 860. 85	\$60, 565. 98
Receipts from subscriptions.....	6, 928. 15	6, 849. 87	7, 789. 61
Receipts from building rent.....	250. 00	250. 00	250. 00
Receipts from interest.....	56. 85		
Total.....	80, 010. 07	79, 960. 85	68, 605. 59
Expenses.....	38, 340. 23	48, 549. 97	55, 033. 92
	Earnings.		Expenses.
Total reported by months.....	\$228, 576. 51		\$142, 924. 12
Total reported for quarter.....	228, 519. 66		141, 903. 27
Difference in reports.....	56. 85		1, 020. 85

In neither of these reports did he include the expense of advertising the Woman's Magazine and the Woman's Farm Journal in papers and magazines outside of his own, which for the year ending March 31, 1905, amounted to \$57,213.18; and for January, February, and March, 1905, amounted to \$28,624.25. Add this latter amount to the expenses for the three months ending March 31, 1905 (as reported monthly), and the net earnings for those three months would be \$57,028.14, or an average of \$19,009.38. Had this advertising account to

outside papers and other magazines been paid by the Lewis Publishing Co., and other disbursements accounted for which Lewis claimed went to discharging "old monuments" (meaning old bills) and which do not appear on records shown us, the surplus of earnings would have been much less than Lewis claims. When his attention was called to this by Inspector Stice, Lewis claimed that he paid this outside advertising account out of his individual funds.

It appears from the records that the Peoples United States Bank was organized with \$1,000,000 capital stock, one-half (\$500,000) paid in, November 14, 1904; and the capital stock was increased March 15, 1905, to \$2,500,000, the increase being paid in March 18, 1905. It also appears from the records of the bank and from records of the Lewis Publishing Co. that E. G. Lewis—

Had drawn salary from the bank from July, 1904, to Feb. 28, 1905, amounting to.....	\$16,598.55
Had borrowed from bank prior to Mar. 15, 1905:	
On note of Lewis Publishing Co.....	87,500.00
On stock of Lewis Publishing Co.....	23,000.00
On stock of University Heights & Realty Co.....	12,770.00
On note of University Heights & Realty Co.....	57,459.00
On note of Edmund Powers (Fiber Stopper Co.).....	2,500.00
On bonds of California Vineyard Co.....	7,000.00
On Mar. 15, 1905:	
On E. G. Lewis unsecured note.....	50,000.00
On account promotion of bank.....	146,375.63
On note Lewis Publishing Co.....	5,500.00
On note of Clawson and McCarthy.....	2,000.00
On note of Sterling Remedy Co.....	500.00
Total.....	411,203.18

Thus, before the increase in capital stock from \$1,000,000 to \$2,500,000, E. G. Lewis, for himself and the companies in which he is financially interested, had taken from the bank \$411,203.18 of the \$500,000 paid in as capital stock by the original subscribers to the bank stock. This action was in direct violation of that part of the State banking law under which the bank was incorporated, which reads:

"No officer or director of the bank shall be permitted to borrow of the bank in excess of 10 per cent of the capital and surplus without the consent of a majority of the other directors being first obtained at a regular meeting and made a matter of record. . . .

"No bank shall lend its money to any individual or company, directly or indirectly, or permit them to become indebted or liable to it to an amount exceeding 25 per cent of its capital stock actually paid in."

Therefore, Edward G. Lewis, having devised and intending to devise a scheme or artifice to defraud the subscribers to the capital stock of the Peoples United States Bank, which scheme then and there consisted in obtaining money subscriptions for stock in said bank, by exaggerations and misrepresentations of the security, safety, and profits to accrue to said subscribers of stock, and promising to put in of his own funds dollar for dollar for every subscriber, and then organizing said bank so that Edward G. Lewis could and would control the same without the voice of its stockholders therein and use the funds subscribed, or a large portion thereof, for his own purposes and benefits, by use of the Post Office Establishment of the United States, in furtherance of such scheme did deposit in the United States mails at Winner Station, St. Louis, Mo., certain letters, pamphlets, magazines, circulars, and books, representing that said bank would be one of the greatest organizations of the world; that its capital stock would be worth several times par the day the charter was granted; that its expenses would be only 15 or 20 per cent of banks doing a like amount of business, while its profits would be many times greater; that from the certified check system alone the earnings "will be nearly a quarter of a million dollars per year," and that Lewis would subscribe for \$1,000,000 of the stock and "every dollar of my profit will go to increase the reserve of the bank each year," and it (the bank) "will be the financial guardian of a million homes," and as to its safety and security he stated five propositions:

First. The bank is governed by officers and directors, but they can not loan its funds to anyone and can not borrow from it themselves.

Second. By our system its loans are passed on, and the greatest part of them are guaranteed and secured by other banks with the best collateral.

Third. The entire capital of \$5,000,000 will be invested exclusively in Government bonds and State bonds and the most gilt-edged securities.

Fourth. * * *

Fifth. My own stockholdings of \$1,000,000 (one-fifth of the capital) are trusted so that their entire earnings go into the reserve fund of the bank, thereby adding each year greatly to the value of your stock holdings.

(See Woman's Magazine, September, 1904, pp. 20 and 21: *supra*, pp. 8 and 9.)

It is not true that the capital stock of said bank was worth several times par on the day the bank opened.

It is not true that the profits of this bank are so much greater and the expense of conducting so much less than other banks, as represented.

It is untrue that the profits from the certified-check system alone would amount to nearly a quarter of a million dollars a year.

It is untrue that E. G. Lewis subscribed for and took dollar for dollar of capital stock with all other subscribers, or that he took \$1,000,000 of the stock in his own name, or that he paid in out of his own funds for any capital stock of said bank, and that his profits would go to increase the reserve of said bank, and in consequence enhance the value of the stock of other stockholders.

It is untrue that the officers and directors of the bank are prevented from loaning or borrowing the funds of the bank, as they had loaned and borrowed \$411,203.18 up to March 15, 1905, when the capital stock paid in amounted to only \$500,000.

It is untrue that the capital stock of said bank was intended to be invested in Government or State bonds and gilt-edged securities.

Please note that \$75,000 is invested in Government bonds which earn only 2 per cent after deducting premiums, and that the highest interest secured is but 4 per cent per annum on certificates of deposit. The expense of operating in postage is such that no dividends can possibly be earned for the stockholders, not to mention salary of Lewis which, as has been shown, will not be nominal so long as he has the sole power to fix it. No dividends have been earned as yet, notwithstanding interest is being paid to depositors. This must come from other funds than profit account, and is another evidence of fraud.

It is untrue that the loans of this bank were passed on or guaranteed by any other bank.

It is untrue that the Woman's Magazine and Woman's Farm Journal were built up on a capital of \$1.25, and also untrue that the Woman's Magazine Building was built at a cost of over half a million dollars, "without mortgage, lien, or loan," and the advertisement of the success of those two papers as evidence that the bank would prove successful is misleading and a misrepresentation of existing facts.

It is not true, as represented in the July, 1904, number of Woman's Magazine, that "The board of directors will be composed of men selected because they have demonstrated abilities, built up large enterprises, amassed comfortable fortunes, and who can not be bought," etc., and the board of directors were not selected, in accordance with the laws of the State of Missouri, by the stockholders, but were and are the sole selection of E. G. Lewis, out of his employees of the Lewis Publishing Co., and who hold their positions and draw their salaries at his own will and pleasure, and are consequently subject to his abject control and dare not refuse to comply with his request or command.

That the voice of the stockholders is silenced and has no part in the conduct, control, or management of the bank is absolutely demonstrated by the following contract of waiver and proxy, made indispensable and a prerequisite to the issue of stock:

[Memorandum of delivery of stock, etc.]

PEOPLES UNITED STATES BANK,

(Place) ———, (Date) ———.

This memorandum witnesseth that, in consideration of the transfer to the undersigned by Edward G. Lewis, president of the Peoples United States Bank, of — shares of the capital stock of said bank (amounting to the par value of \$—), I hereby authorize him to receipt for me and in my name on the books of said bank for the certificates for my said shares; and in consideration of his services in the organization of said bank and of his acceptance hereof, I hereby request and appoint said E. G. Lewis to act as proxy to vote and represent my said stock at all meetings of stockholders of said bank, in event I be not personally present; and upon his acceptance of this proxy the same shall remain in force until revoked by me after three years from this date, by

written notice to said bank; but before any revocation it is agreed that said Lewis shall first have the option (upon 10 days' written notice to him) to purchase said stock of me or my legal representatives, at its fair market value at the time, and I hereby ratify the proceedings taken for incorporation and operation of said bank for the increase of its stock, and hereby waive any right to subscribe for any increase of stock unless with the written assent of said Lewis, and I request said Lewis to cause to be forwarded to me the official certificate for my said stock, and upon his acceptance of the duties of proxy as aforesaid, and due consignment of said certificate by mail to me, this memorandum shall become effective, and not otherwise.

In attestation witness my signature the date first aforesaid.

(Signed) _____,
(Address) _____,
(State) _____.

Witness to signature:

Address, _____.

On April 8, 1905, Mr. F. G. Putnam, cashier of said bank, stated to Inspectors Fulton, Sullivan, and Stice, in the presence of E. G. Lewis, that 4,381 shares of the increased capital stock had been issued, and in every instance the stockholder had signed the foregoing proxy and waiver before the certificate of stock was issued.

It is untrue that the great profits which Lewis represented in literature sent through the mails would accrue to the bank, could possibly accrue to the bank as represented, and Lewis, recognizing this fact, devoted a long article in the May, 1905, Woman's Magazine to a scheme of turning the bank into a pawnshop and accumulating riches out of the diamonds, gold watches, and gold bullion pawned to the bank on loans at 8 per cent interest, and melting up the gold watches and bullion pawned as pledges for loans and forfeited to the bank.

Special attention is invited to correspondence of E. G. Lewis with Miss F. Ellen Ayars, New Richland, Minn., rural route No. 2, which shows that under date of September 17, 1904, Lewis mailed her a receipt for \$1 "for a corresponding amount of shares of stock in a Peoples Mail Bank or Trust Co." (envelope inclosing same being postmarked September 20, 1904), and under date of December 9, 1904, he sends demand for an installment of \$24 on her subscription of \$25 to stock of Peoples Postal Bank, to be sent not later than December 20, 1904. It appears that she did not remit the \$24, and on March 2, 1905, he mails her a pass book, with a credit of 1 cent dividend on her \$1 remittance for stock. He was therefore paying a dividend of about 2 per cent cent per annum at a time when the bank had not earned a dividend and was practically insolvent from the misuse of funds received for capital stock.

The investigation of this case, which at the beginning was apparently courted by E. G. Lewis, was afterwards much hampered and delayed by him when he found we desired to verify every account and representation, and on the 21st ultimo, when Inspectors Sullivan and Stice called to verify the credits to which Lewis was entitled to returns of remittances for capital stock, cancellations, withdrawals, alleged duplicates, etc., found on original records of subscriptions for stock, Lewis practically informed us that we had "gone the limit" in the investigation; that his girl clerks were scared to death every time the inspectors or State bank examiners visited his office, and were circulating it over the city that the bank was in a bad way and was likely to go out of business; and that Inspector in Charge Fulton's letters sent out had cost him over \$8,000 in withdrawals of money sent in for stock or deposits. He then proposed that we leave with him a list of the credits which we had found, and he would withdraw all papers relating to same, and then allow us to verify them. We have not yet had that opportunity.

We have already demonstrated that a large portion of the funds secured by E. G. Lewis for stock of the Peoples' United States Bank through misrepresentations and exaggerations sent through the mails were misappropriated and used by Lewis, and believe if the bank be continued and increases of capital stock thereto be granted from time to time, enabling him to have excuse for additional solicitations of more money, either as additional capital stock or deposits, that great and enormous frauds will continue to be perpetrated by said Lewis, and we therefore recommend that a fraud order be issued against the Peoples' United States Bank, its officers and agents as such,

at St. Louis, Mo. We will submit the evidence and facts obtained as early as practicable to the United States attorney for the eastern district of Missouri, with a view to criminal prosecution for using the mails in furtherance of a scheme to defraud.

Very respectfully,

(Signed)

WM. T. SULLIVAN,
J. L. STICE,
Post Office Inspectors.

Mr. ROBERT M. FULTON,
Inspector in charge, St. Louis, Mo.

MAY 17, 1905.

Report examined, approved, and forwarded to chief inspector.

R. M. FULTON,
Post Office Inspector in Charge Division.

[Inclosures.]

POST OFFICE DEPARTMENT,
OFFICE OF POST OFFICE INSPECTOR.
St. Louis, Mo., May 16, 1905.

Mr. R. M. FULTON,
Inspector in Charge, St. Louis, Mo.

SIR: I have the honor to submit a supplementary report in case 39640-C, in accordance with your suggestion, with special reference to the developments which occurred at the office of the Peoples United States Bank as a result of our visit there March 14, 1905.

Our report in the case deals with the general conditions and establishes our contention, viz, that a scheme was devised to defraud. On the date of our visit the daily balance book in the bank showed the following condition in the items mentioned:

E. G. Lewis, collection account.....	\$128, 042. 44
E. G. Lewis, special account.....	1, 129, 507. 43
Interest.....	3, 902. 31
Certified check.....	3, 494. 80
Profit-sharing certificates.....	24, 527. 50
Commercial.....	479. 74
Demand subscriptions.....	46, 074. 50
Missouri Trust Co. deposit.....	\$4, 378. 70
National Bank of Commerce deposit.....	54, 690. 34
Expense account.....	3, 073. 43
Suspense account.....	13. 38
Cash.....	14, 681. 59
Demand loans.....	147, 459. 00
March 15, 1905:	
E. G. Lewis, collection account.....	4, 733. 00
E. G. Lewis, special account.....	1, 503, 745. 90
Interest.....	3, 946. 34
Certified check.....	3, 604. 80
Profit sharing certificates.....	24, 877. 50
Commercial accounts.....	469. 74
Demand subscriptions.....	. 00
Missouri Trust Co. deposit.....	54, 378. 70
National Bank of Commerce, deposits.....	14, 389. 85
Expense.....	3, 528. 89
Suspense.....	8. 38
Cash.....	13, 700. 10
Demand loans.....	393, 834. 63

No other material change in other items between March 14 and 15.

The special account of E. G. Lewis was, on March 14, \$1,129,507.43. This entry covers the money received by Lewis for sales of stock to that date on original subscription. It is an untrue showing, and Lewis knew it. Realizing, then, that this investigation was to be more rigid than he had anticipated, and fearing exposure, he immediately took steps to cover the shortage which his own records showed. It was perfectly natural that his attention would be given to the entry that covered the defalcation. That was the subscriptions to

stock—or the special account. We believe that a further shortage can be shown if we are permitted to check the items of canceled subscriptions, demand subscriptions, and collection account. This we have not been permitted to do. On the showing of his own records as above set out, he was an embezzler on March 14 and short to the amount of \$196,375.63. Please note the increase in the special account, March 15, \$374,238.47. How was it increased? Was that amount of new subscriptions received that date? Not at all. By transferring the demand subscriptions of \$46,074.50, \$123,309.44 of the collection account, \$8,478.90 actual new subscriptions and arbitrarily adding to that a forced amount of \$196,375.63, which was a sum equal to the amount of two notes which he placed in the assets of the bank on March 15, and which appear in the item of demand loans, one being \$50,000 and one \$146,375.63. Note that no money was paid on these notes and that therefore on the 14th the assets were short that amount.

This amended or supplementary report is submitted, as the joint report of Inspectors Sullivan and I, does not set out clearly the fact that the notes of \$196,375.63 made by Lewis on March 15 went into the demand-loans account as an asset, while a similar amount was placed in the special account as a liability.

Very respectfully,

(Signed) J. L. STICE,
Post Office Inspector.

MAY 19, 1905.

Report examined and approved.

R. M. FULTON,
Inspector in charge.

PEOPLES UNITED STATES BANK.

I submit here as Exhibit No. 1 a carbon copy of the report of the post-office inspectors, the special representatives of the Postmaster General, on the case of the People's United States Bank.

This report shows that on March 13, 1905, 10 days after Postmaster General Cortelyou took his seat, the inspectors appeared at the bank and took possession of its books, papers, etc., and upon what was alleged to be found therein compiled a report to the Postmaster General.

The first part of the report is devoted to a "brief history of Mr. E. G. Lewis's career for the last 10 years." It then goes on to make liberal quotations from the literature alleged to have been sent out by Lewis in the promotion of the bank, and arrives at conclusions as to the fraudulent intent thereof. This is followed by statements of the bank's financial affairs as disclosed in the inspector's investigation of its books. The report closes with a recommendation that a fraud order be issued against the bank and its officers, and then says that the matters reported upon will be laid before the United States district attorney with a "view to criminal prosecution for using the mails in the furtherance of a scheme to defraud."

The report does not state or refer to any statute which authorizes such an investigation. It does not state that any person had complained of having been defrauded. It does not state what bearing the past history of Mr. Lewis had to do with the right of the bank to the use of the mails.

I had 15 years' experience in the postal service and I am unable to recall an instance where any other bank in the United States, and especially a State institution, was so investigated and reported upon to the Postmaster General. I have searched in vain for a statute

which authorized such a proceeding. I find only that the Constitution, in Article IV, says:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched.

Mr. AUSTIN. What are you reading from now?

Mr. MADDEN. This is my own statement.

Mr. AUSTIN. How long is it?

Mr. MADDEN. It is about two-thirds of that [indicating].

Mr. AUSTIN. It will take you over an hour to read that.

Mr. MADDEN. Yes, sir; it certainly will.

Mr. AUSTIN. I ask that the committee send for Mr. McCoy and let him sit here and listen to the balance of it.

Mr. ALEXANDER. He said that he would return in a few moments.

Mr. AUSTIN. I think that every man who voted to permit Mr. Madden to make a speech should stay here and listen to it.

Mr. MADDEN. I venture to remark that if they will remain I will keep them interested.

Mr. AUSTIN. Well, go on.

Mr. MADDEN. Criminal indictments for using the mails in the furtherance of a scheme to defraud were subsequently returned by the grand jury.

This inspectors' report reached Washington on May 19, 1905. The bank was then a \$2,500,000 institution, duly chartered by the State of Missouri. On June 12 following, the secretary of state, acting for the State of Missouri, and being the officer authorized to act in such matters, wrote Post Office Inspector in Charge Fulton at St. Louis and set forth the position of the State concerning this bank, which was then in its formative period. This letter would appear to be important for several reasons. For one thing, the inspectors found fault with the board of directors, and in part that fault was the basis for their recommendation to issue a fraud order. Among other things the letter said:

* * * Since the reorganization of the board was begun four new members have been elected, all well-known business men of St. Louis and all approved by my department.

This board is a substantial compliance with requirement No. 1 of my letter of demands on the bank under date of June 6, a copy of which I herewith inclose for your information and the information of your department. This board of directors promise me that every other requirement made in said letter will be complied with at the earliest possible moment, and I have confidence that this promise will be kept.

Mr. Cook, of my department, will take up the details of the affairs of the bank with the new board at once and ascertain with them the exact conditions and proper remedies for any evils found. * * *

Since I began the investigation the capital stock has been more fully paid, and this department is informed that \$2,400,000 of the capital has been actually paid up, leaving only \$100,000 yet to be paid by November 14, 1905, the time required by law.

I enclose you this letter and send you this exhibit that you may bring them before your department. * * *

EXHIBIT No. 2.

ST. LOUIS, June 12, 1905.

Hon. R. M. FULTON,

Post-Office Inspector in Charge, St. Louis, Mo.:

DEAR SIR: In reply to your letter of request of the 9th instant, I have the honor to inform you that this day the reorganization of the board of directors of the Peoples United States Bank was completed by the election of ex-Gov. Lon V.

Stephens and W. F. Carter as members of said board, vice A. P. Coakley and F. J. Cabot, resigned, which is approved by me; that since the reorganization of the board was begun four new members have been elected, all well-known business men of St. Louis and all approved by my department; that the names of the directors now are E. G. Lewis, James F. Coyle, Theodore F. Meyer, Lon. V. Stephens, and W. F. Carter; that this board is a substantial compliance with requirement No. 1 of my letter of demands on the bank under date of June 6, a copy of which I herewith inclose for your information and the information of your department. This board of directors promise me that every other requirement made in said letter will be complied with at the earliest possible moment, and I have confidence that this promise will be kept.

Mr. Cook, of my department, will take up the details of the affairs of the bank with the new board at once, and ascertain with them the exact conditions and proper remedies for any evils found. It is but fair to state that the stock of said bank is being issued to the respective subscribers with all diligence and as rapidly as can be done, and, I am promised, will be completed within a few days.

Since I began the investigation the capital stock has been more fully paid, and this department is informed that \$2,400,000 of the capital has been actually paid up, leaving only \$100,000 yet to be paid by November 14, 1905, the time required by law.

I write you this letter and send you this exhibit that you may bring them before your department, but ask that they be not published.

Assuring you of my willingness at all times to cooperate with your department by furnishing any information we are permitted to give out regarding the condition of any institution under our charge, I have the honor to remain,

Yours, very respectfully,

JNO. E. SWANGER,
Secretary of State.

I submit as Exhibit No. 2, a true copy of the letter from which the foregoing is taken:

After the receipt of the inspectors' report at Washington, the bank was notified that it would be accorded a hearing at the department on June 16, 1905, before the Assistant Attorney General for the Post Office Department. Hon. George W. Shields, who was Assistant Attorney General under President Harrison, was one of counsel for the bank. He subsequently described what took place at the hearing. After stating that a copy of "charges," formulated upon what the inspectors reported on the bank's affairs, had been furnished the representatives of the bank, and that at the opening of the proceedings, the Assistant Attorney General for the Post Office Department said he was ready to hear a reply to those charges. Mr. Shields said:

We replied we were ready to hear what the Government had to offer in support of the charges and were informed that the report of the post-office inspectors who had investigated the subject had been read by the Hon. R. P. Goodwin, and that it was assumed that the facts stated in these reports were true, and unless satisfactorily explained by the respondents, action would be taken thereon on the assumption that the charges were true.

The respondents filed answers in writing to the charges under oath, denying the same, that of the bank being general, and yours (President Lewis) being more specific and explanatory.

We insisted that as the charges were quasi criminal that the Government should sustain the same by testimony. The reply was that the reports of the inspectors were before the Assistant Attorney General; that the reports of the inspectors had been read by the Assistant Attorney General and would be considered as true. We asked to see the reports of the inspectors and to cross-examine them on their said reports, and this was refused on the grounds that the reports were confidential.

No witness or documentary testimony was offered on the part of the Government. The respondents were informed that they could offer anything they had in reply to the charges.

Finding we could not see the report or hear what the Government relied on to sustain the charges, the respondents then offered both oral and documentary

testimony on their behalf. The counsel for the respondents were permitted to argue the matter as best they could without knowing what was contained in the very voluminous and secret report of the post-office inspectors, and without privilege of examining them on their report. Counsel for the Government made no argument. A motion was made by the respondents to dismiss the proceeding for want of jurisdiction and because the respondents were not permitted to see or hear the evidence against them and because they were not confronted by the witnesses against them, and on other grounds violative of their constitutional and legal rights, and the Assistant Attorney General refused to pass upon said motion.

On July 6, 1905, the Postmaster General, acting under the provisions and the authority of the act of September 19, 1890 (R. S., sec. 3929), issued a fraud order against the Peoples United States Bank, its officers as such, and against E. G. Lewis personally. That fraud order shut off the use of the mails and spelled the ruin of the bank. Afterwards, it paid every depositor dollar for dollar, and every stockholder a dividend of 87 per cent of his investment.

The following is an exact copy of a letter issued by the receiver of the bank February 5, 1906. Subsequent to the issuance of this letter, which shows that 85 per cent dividends were declared to stockholders, an additional 2 per cent dividend was declared:

ST. LOUIS, MO., *February 5, 1906.*

HON. ALEX. DEL MAR, *New York City.*

DEAR SIR: In reply to your inquiry I beg to state that every loan and investment held by the Peoples United States Bank has been liquidated 100 cents on the dollar, with interest in full, to date.

The depositors are being paid in full, and I have already declared dividends to the stockholders of 85 per cent.

Respectfully,

FREDERICK ESSEN,

Receiver People's United States Bank.

After the fraud order was issued, the board of directors of the bank met and adopted the following resolutions:

Resolved, That the board of directors of the Peoples United States Bank express their confidence in Mr. Lewis's integrity and good intentions, and their sympathy with him in the war of persecution being waged upon him and his interests. After close business relationship with him for a considerable time, his associates in this directory are convinced that he is an honest and sincere man, of rare and tireless energy, and that, so far from his bank project being a fraudulent scheme, we believe it embodies valuable and useful ideas, and that his efforts to promote its success were inspired by worthy and honorable purposes.

Resolved, That we deem it a grave subject for the consideration of the American people, how a bank like this, representing investments of more than \$2,000,000, may have its credit instantly destroyed by a despotic order of a Federal officer without opportunity to know on what evidence it is condemned, and (as Judge McPherson, a Federal judge, of Red Oak, Iowa, has declared) without any possibility of review by the courts of our country. Such a condition of affairs involves an interpretation of our laws which we regard as a menace to the liberty and rights of every citizen. We protest against such interpretation, and we declare that this bank is not a scheme to defraud anyone, by any means, fraudulent or otherwise.

(Signed)

THEO. F. MEYER,

Pres. Meyer Bros. Drug Co.

W. F. CARTER,

Director Missouri-Lincoln Trust Co.

LON. V. STEPHENS,

Ex-Governor and Ex-Treasurer State of Missouri.

JAMES F. COYLE,

Coyle & Sargent.

Directors.

Promptly after the fraud order was issued, the bank applied to the court for a restraining order. Later the matter came on to be heard. The following is taken from the decision of the court:

They (the inspectors) make their reports, and their reports, in the language of the statutes, was "evidence satisfactory to him." * * * That evidence may or may not have been legal evidence according to the standard of text-books. It may have been hearsay. It may have been secondary. It may have been delivered by an incompetent witness; * * * but whatever it was, it was evidence satisfactory to him. * * * He committed no error of law, and his findings of fact are not open to inquiry by the courts.

The bank later engaged Alexander Del Mar, editor of the American Banker, published in New York, to examine into the bank's affairs and make a report thereon. Del Mar declined to accept, unless he were allowed to speak out freely in criticism of anything found which he did not approve.

Mr. REDFIELD. Pardon me, but he did feel free to accept with that understanding?

Mr. MADDEN. Yes, sir.

His report was issued June 18, 1906. The following is an extract from it:

The following report on the history and condition of the Peoples Bank is made in response to an invitation extended by some of its stockholders to me, as an expert accountant and financial writer, to examine into its affairs. For this purpose everything was thrown open by the officials of the bank to my inspection, including the books of account, vouchers, and correspondence.

Mr. AUSTIN. What is the date of that report?

Mr. MADDEN. 1905.

I have taken into consideration and replied to every charge or accusation of an explicit character, the charges contained in that portion of the inspector's report which appeared in the St. Louis papers, the charges brought forward at Washington and given to the press in Mr. Goodwin's book (the pamphlet issued July 9); the charges alluded to in Judge McPherson's decision and those summarized by the counsel in the case. If there are any other charges, I shall be happy to reply to them.

As the result of this examination, which has been carefully made, I am satisfied that the Peoples Bank, however original its method of promotion, or however novel its features and plan of working, was an honestly designed, and an honestly conducted institution, and one which, had it not been disturbed, would have proved profitable to its stockholders and depositors, and even beneficial to the country at large, by increasing the revenues of the Post Office Department, providing a safe and expenseless money-order system, and affording facilities to the multitude for obtaining small loans of money upon pledges.

I am constrained to add that the dates and other details of the attacks made upon it by the several parties indicated point to a concerted effort, originated in trade rivalry and embittered by malice.

The intent of Congress in empowering the Postmaster General to issue fraud orders in certain cases has been perverted and made to subserve other ends than that for which it was designed. The office of the State superintendent of banks has been usurped by local post-office inspectors and their usurpations have been employed to ruin a meritorious enterprise and destroy the resources and credit of an innocent man. The Postmaster General has been imposed upon to the extent of inducing him to issue warning circulars concerning a case which has never been tried before a court of law. The whole story is one of shameful intrigue and persecution; one that should have been impossible in a free country and one that when fully digested can scarcely fail to weaken that confidence in the security of our laws and institutions upon which our commercial affairs have hitherto reposed.

Mr. AUSTIN. Now, I am free from any prejudice in this case, and I want to sit on it as a judge. I have no feeling in the matter.

If there is any department connected with this administration where I have not had what I consider fair treatment, it has been the Post Office Department.

Mr. MADDEN. You are not the only one.

Mr. AUSTIN. I just make that statement in order to show that I have no feeling in the case, but if you will try this case without abuse and without all this criticism, and go ahead and submit your proofs and the facts, I believe you would greatly strengthen your case with this committee.

Mr. REDFIELD. He is reading an extract from a report made.

Mr. AUSTIN. I did not know whether it was a report or a speech.

Mr. REDFIELD. He is reading a report from a banking expert before whom all the facts were placed and who, over his signature, is reporting the results of that investigation. Is that the fact?

Mr. MADDEN. Yes, sir.

Mr. AUSTIN. Go on, then.

Mr. MADDEN. If we can not sustain all these allegations by proof, we have no case.

I submit herewith a complete printed copy of the Del Mar report, marked "Exhibit No. 3."

EXHIBIT No. 3.

REPORT ON THE PEOPLES UNITED STATES BANK OF ST. LOUIS.

[By Hon. Alex Del Mar, editor the American Banker, New York, formerly Director of the Bureau of Commerce, Navigation, and Statistics, United States Treasury Department.]

ST. LOUIS, *January 18, 1906.*

The following report on the history and condition of the Peoples Bank is made in response to an invitation extended by some of its stockholders to me, as an expert accountant and financial writer, to examine into its affairs. For this purpose everything was thrown open by the officials of the bank to my inspection, including the books of account, vouchers, and correspondence.

I have taken into consideration and replied to every charge or accusation of an explicit character, the charges contained in that portion of the inspector's report which appeared in the St. Louis papers, the charges brought forward at Washington and given to the press in Mr. Goodwin's book, the charges alluded to in Judge McPherson's decision, and those summarized by the counsel in the case. If there are any other charges, I shall be happy to reply to them.

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I am constrained to add that the dates and other details of the attacks made upon it by the several parties indicated point to a concerted effort, originating in trade rivalry and embittered by malice.

The intent of Congress in empowering the Postmaster General to issue fraud orders in certain cases has been perverted and made to subserve other ends than that for which it was designed. The office of the State superintendent of banks has been usurped by local post-office inspectors, and their usurpations have been employed to ruin a meritorious enterprise and destroy the resources and credit of an innocent man. The Postmaster General has been imposed upon to the extent of inducing him to issue warning circulars concerning a case which has never been tried before a court of law. The whole story is one of shameful intrigue and persecution; one that should have been impossible in a

free country, and one that when fully digested can scarcely fail to weaken that confidence in the security of our laws and institutions upon which our commercial affairs have hitherto reposed.

I can see but one proper course to be pursued in reference to the matter. The fraud order should be revoked.

ALEX DEL MAR,
Editor of the American Banker, New York.
(Formerly Director of the Bureau of Commerce, Navigation,
and Statistics, United States Treasury Department.)

REPORT ON THE PEOPLES UNITED STATES BANK OF ST. LOUIS, MO.

[By the Hon. Alex. Del Mar.]

In June, 1890, Mr. E. G. Lewis, a son of Rev. William H. Lewis, of Bridgeport, Conn., established the Woman's Magazine at St. Louis, Mo., and in 1901 he acquired the Woman's Farm Journal, both of them popular monthlies published at a low price. These two papers attained a combined circulation of over 2,000,000 copies and a lucrative advertising patronage, which together yielded him a net profit of about a quarter of a million dollars per annum. A large portion of these profits were invested in eligible grounds near those of the St. Louis Exposition and in their improvement. The design was a suburban park, tastefully laid out with macadamized roads, cement pavements, and furnished with sewers and water and gas mains. The exposition had already furnished trolley lines, hotels, restaurants, shelters, telegraphs, telephones, and other facilities and conveniences. The park grounds were elevated and gravelly, well drained, and commanded a view of the city. It was an ideal location and promised to soon become a desirable place of residence away from the turmoil and smoke of St. Louis and yet in close touch with all parts of it and directly in line of the westward growth of the best residential section of the city. Half a dozen handsome buildings arose upon its site, and others were in progress, and are still in progress, when this movement was arrested and almost paralyzed by the events to be narrated. In the midst of this thriving suburb Mr. Lewis erected an edifice of commanding proportions and elegant design, the exterior of solid gray stone, the interior of polished marble, with approaches, halls, and staircases fit to be compared, both in design and material, with those of the Grand Opera House of Paris. To this edifice, which was intended both for the offices of the popular magazines and the popular bank, the latter as yet only in his mind, Mr. Lewis built and attached a long and solidly constructed annex, in which were arranged the numerous printing presses and other machinery and storehouses of the magazine, itself a structure of ample proportions and no mean design. The cost of these edifices was over three-quarters of a million dollars cash. The main building and annex stood, and still stands, in the midst of the park, with the villas scattered upon three sides of it, the city and trolley lines in front, with the Washington University and the exposition grounds and buildings on its right hand and numerous private structures on its left.

During the period of the exposition Mr. Lewis, at his own loss of about \$30,000, erected a huge caravanserie on these grounds, which furnished thousands of people with board and lodging at the cost of a few cents per day, an accommodation which, when it became known, largely increased the number of visitors to the exposition and correspondingly benefited the United States Government, which had financed it.

The cost of the magazine grounds, about 320 acres, together with the permanent buildings and improvements, was about \$2,000,000. At the period when the bank loaned \$330,000 upon them this property was worth two and three-quarters million dollars, and at the present time it is worth, if not more, quite as much. When the buildings for the Woman's Daily newspaper, now being contracted to be erected upon these grounds, are completed this property will scarcely fail to command a much higher valuation. The large number of people to be connected with this establishment will need near-by homes, and these will preferentially be erected upon or near the magazine grounds, thus greatly adding to their value. More than 90 private homes are already under contract. These events, transactions, and plans bring us down to about the month of May, 1904, when Mr. Lewis first communicated to the public the definite plan of a popular bank.

At this period Mr. Lewis was worth in his own right, clear of debt or incumbrance, fully \$1,500,000, and, minus what the United States Post Office has cost him, he is worth that yet, and even more. He was in the prime of life, full of business energy and great designs, all of which he appears yet determined to carry out. He was therefore neither a dying miser disposing of a fortune which he could no longer enjoy nor an impecunious sharper planning to enrich himself by entrapping people into deceptive schemes. He was a publisher and merchant, with an ample fortune, an income of a quarter of a million a year, and imbued with the desire to establish popular undertakings which he had every reason to believe, and still believes, would and will become profitable.

Mr. Lewis's plan for a bank embodied several peculiar features:

1. It should be a joint-stock bank, whose shares should be owned by that numerous class of people living upon farms and in other remote places where at present there were no banks or banking facilities, and where money was therefore obliged to be hoarded; practically the class who subscribed to his magazine. This plan would not only avoid rivalry with the existing banks, which, however numerous and scattered, wholly failed to reach the class he aimed to enlist; it would bring into public circulation a vast amount of coin and notes now hidden away in secret places, much of it otherwise destined to be altogether lost. In thus offering a facility to the circulation, he laid no claim to a public motive; yet it can not be denied that, whatever the motive, the operation of the plan was of public advantage. In a single year's time he succeeded in gathering up two and a half millions of such money, and had he not been interrupted there is little doubt that these accessions to the active currency of the country would have proceeded at an accelerated rate. Coins and notes were remitted to the bank of dates that betokened long hoarding—gold pieces inclosed in leaden pipes, silver of antebellum dates, greenbacks of the war period, besides other antiquities.

In order to confine the shares of the bank to the class or classes indicated, no subscriptions were permitted of more than \$500, and where some persons, to evade this regulation, subscribed \$10,000 under different names than their own, and the evasion was detected, the subscriptions were returned.

2. A second peculiar feature of the bank was that its business was to be done entirely by Government mail. Here, again, while there was no public advantage claimed, a public advantage resulted. The Post Office Department has for a long time past been embarrassed with an annual deficit. The business of this bank had already involved an annual purchase of stamps to the value of \$80,000, and had it not been interrupted this would probably have soon grown to \$100,000. A bank of some sort was pressed upon Mr. Lewis by the numerous persons who voluntarily sent their money to him for safe-keeping. The sums thus remitted amounted at one time to nearly \$250,000. The feature of banking by mail was suggested first by the fidelity, economy, and dispatch with which the mails had hitherto been carried; second, by the growth of the mail-order system; and third, by the system of rural delivery. These operations all pointed to the necessity of a popular bank, a bank owned by small proprietors, a bank in which the proprietors would naturally deposit their savings and from which such savings would flow into the general circulation through the medium of secured loans, and a bank which would afford facilities for transmitting small sums of money to cover purchases by mail and the transmission of the goods by the rural free delivery. It was out of this last suggestion that grew the third feature of the bank.

3. For many years the Post Office Department of the United States has vainly endeavored to emulate the example of Great Britain and other European States in affording to the people a means of transmitting small parcels of merchandise by mail. In searching for the reasons why so desirable, practicable, and beneficial a reform was always defeated in Congress, Mr. Wanamaker, a former Postmaster General and himself a merchant of very extensive dealings, is credited with the observation that the reasons were only five in number, and that these five were the leading express companies which now monopolized and shared among themselves this lucrative commerce between the States. The observation involved a reflection upon the indifference of Congress which it would be ungenerous to confirm; yet the fact remains that ours is the only great Nation without a parcels post. But this is not all. The carriage of small parcels naturally involves the transmission of small sums of money wherewith to pay for them, and it is in this feature of the express business that the Peoples Bank threatened to become a formidable rival. By means of money deposits and credits in numerous banks throughout the country and by under-

taking to transmit small sums of money between any two points free of expense, the Peoples Bank offered a facility which the express companies denied; and this facility was being rapidly and largely made avall of by the public when the bank was interrupted. The system of exchange established by the latter was secured by the cooperation, the capital and the credit of numerous banks, and did not at all rest upon that of the Peoples Bank. The bill of exchange, draft or check, was issued by a local bank and cashed by a distant one, without charge, the latter being indemnified by a cash payment in advance from the Peoples Bank. The cost of the system was more than adequately defrayed to the Peoples Bank by the earnings of interest on the money in course of transmission and by delayed presentations. It was a perfectly automatic and expenseless system of domestic exchange. The Peoples Bank was satisfied with the working of the system; its correspondent banks were satisfied; and the purchasers of the exchange were satisfied. Nobody lost a penny by it, and here again, strangely enough, though no advantage to the general public, no advantage except to the parties interested was planned, yet a great national advantage was destined to flow from its working. The post office charges 8 cents for a money order, a charge which is doubtless based upon the belief that it costs this much, or nearly this much, to transmit the money, as indeed it probably does. The Peoples Bank was able to do it for nothing, and had it not been interrupted, the evidences of this ability would have become so vast and numerous as to have completely satisfied the department and the public. With the way thus paved by one bank, probably soon to be followed by other banks, just as our great trunk railways have all been formed by links of little local railways, the Government would have had prepared for it a perfect money-order system, costing nothing to the people and affording an additional source of income to the Post Office Department, through the facility which it afforded to the mail-order commerce.

4. Always imbued with the design to afford facilities to the rural classes of the Nation, and, in thus serving them, to derive an honorable commercial advantage for the institutions with which he was connected, Mr. Lewis proposed to the Peoples Bank another source of profit. It often happens that the farmer is pushed for a small sum of money. He does not like to pledge his farm, for such an act would necessarily, through our registry system, become public, and hurt his credit. But he possesses other property, portable property, for which he paid money and upon which he ought to be able to raise a small loan when necessity commands. There are no pawnbrokers in his vicinity, and if there were he would not care to visit them. The parcels post, if there were one, at all events the express company, offers a facility. The Peoples Bank offers another; it has established a Monte di Pieta and lends money on pledges at 8 per cent per annum. The exchange system is a third facility; it will transmit to him the money he requires. The post office is a fourth facility; it forwards his inquiry, brings a reply, conveys the correspondence concerning the draft, and finally carries the draft itself. All of this business, every step of it proper, natural, legal, honorable, commercial, and beneficial, was interrupted. The Monte di Pieta was first established in Italy many centuries ago and under ecclesiastical authority, the design being to afford a bank of refuge to the people, secure from the avidity of the professional money lender, a design in which it thoroughly succeeded. In France it was established more than a century ago. In both countries it has proved of great benefit, and it would be as difficult now to tear it down as it was to build it up, for it was erected, as was the Monte di Pieta of the Peoples Bank, to meet the necessities of the poor. But, unlike the former, the latter found no protector, and the post-office order has, for a time at least, destroyed it.

June, 1904. Having now set forth the features of the bank proposed by Mr. Lewis, I proceed to narrate the circumstances of its formation. In doing so, it becomes necessary to distinguish Mr. Lewis as a promoter acting upon his individual responsibility, and Mr. Lewis as president of the bank acting as a fiduciary officer and trustee for the shareholders and depositors. I can find no prospectus or offering of the bank or the bank officers to the public which is in any manner open to criticism. Its proposals for subscriptions to the shares and for deposits of money were all of a simple, straightforward, and strictly business character. So, also, as I am constrained to believe, were its exchange business, its savings-bank feature, or time deposits on interest, its Monte di Pieta feature, and its loans, though of this last item, as it has been called in question, which is not the case with its other transactions, it will be necessary to speak again.

many of the current advertisements of very respectable banks, both State and national. If there is any fault to be found with this style of addressing the public it must be largely charged to the Post Office Department itself. By admitting to the mails newspapers and periodicals at a cent a pound, by admitting packages of merchandise weighing up to 4 pounds each, and by organizing a rural-post delivery it has opened a correspondence and established means of dealing between the large cities and the entire rural community, in this country including two-thirds of the population, which never existed before. Several of the mail-order houses to which these facilities have given birth sell ten to forty millions a year each; and one has only to read their circulars and advertisements to be convinced that Mr. Lewis's style of addressing his readers was very far from being peculiar or calculated to deceive. It was merely the language made necessary by the novel facilities offered by the Post-Office Department.

5. In his previous covenants with the public Mr. Lewis promised to put all of his "holdings" into the bank. These holdings included his one million of stock in the publishing company and his equity in the real estate company, which was almost equally as valuable. He was actively employed in redeeming this promise, and, indeed, had already partly redeemed it by selling or hypothecating his holdings for cash; by paying \$100,000 of such cash into the bank; and by arranging to borrow more cash and put that in also. The law does not permit property to be subscribed as capital; it demands cash; and this very requirement of the law, the turning of his property into cash, in order to add to the capital of the bank—which, by the way, he was under no obligation to do, beyond his enthusiastic, generous, and voluntary promises to the public—was what the post office order defeated and twisted into a sort of accusation, as though it were wrong.

In the January, 1905, issue of the Woman's Magazine, Mr. Lewis added a new promise to his previous ones. Having built himself a beautiful and commodious home and insured his life for about half a million dollars, and thus provided for his family, and being still ambitious to make the bank a very rich and strong institution, he now voluntarily promised the public that in the event of his death his income from the Woman's Magazine, which he had hitherto reserved, should also be turned into the bank. This, of course, was not giving it all away, because he himself was the largest stockholder in the bank, but it was giving away or promising to give away that proportion of it which was represented by the public subscriptions to the bank stock. Here are his words: "While I live I am entitled to the income of my magazine, for when I die I propose to see that it, too, goes to those who joined me in the organization of our bank, by adding its (the magazine's) great income to the reserve of the bank." Mr. Lewis was under no obligation to make this promise. It can not be shown that any additional subscriptions to the bank stock were influenced by it, nor if it could, that any of the subscribers, whether of this class or any other, ever complained of being lured, misled, or deceived by this or any other promise he had made. The excessive zeal and misplaced solicitude of the post office employees were entirely uncalled for. It not only proved disastrous to a worthy, prosperous, and beneficial enterprise, it surrendered to the caprice of petty officials a power which, if urged by ambition rather than avidity, would be sufficient to overthrow the Government.

6. The statement in the same issue that "the income from interest alone of our bank is already nearly a thousand dollars per week" is quite correct, but as it implies active operations on the part of the bank, which really did not fully commence until the following summer, it is necessary to state that this income was the passive earnings of the bank derived from placing its capital at interest.

7. The other statement that "deposits began to be received about a week ago" needs similar explanation. They indeed began at the period mentioned, but they had no sooner assumed any importance than they were pounced upon simultaneously by the United States Post Office and the Missouri state department, both of them acting in unaccountable concert and both personated in St. Louis by men who, to say the least, were certainly not qualified to exercise the censorial powers of a Cæsar.

8. The same issue states that "the organization expense has been heavy and is still heavy, but I must advance this personally." As all the transactions of the bank were to be conducted by mail, the running expenses, as compared with those of other banks, promised to be very small, but for the same reason the organizing expenses, as will be seen from the single item of postage stamps mentioned above, were unusually heavy. Having to deal with over 2,000,000 of correspondents,

and opening the subscriptions to so low a sum as \$1, involved an amount of detail and expense which it would be tedious to describe by any other mode than to mention some of the instrumentalities employed. These included the engagement of some fifty-odd clerks, the issuance of several million circulars and letters, and the expenditure of more than \$60,000 in postage stamps upon the letters alone. With the design to spread the organization expense, about \$146,000, over as large a surface as possible, Mr. Lewis, instead of charging it at once to the bank, as is commonly done in like cases, borrowed it from the bank upon his own responsibility and paid it back into the bank, thus voluntarily converting it into a personal debt, which was to await auditing and acceptance by the bank at a later period when its continually increasing capital would make such expense bear more lightly upon each stockholder.

9. President Lewis announced that it was intended that all loans by the Peoples Bank were first to be submitted to an advisory financial board, to be composed of 15 directors of other banks and afterwards to the directors of the Peoples Bank. Steps to organize the financial board first mentioned were in progress and several acceptances had been received when the bank was stopped.

10. Allusion to "the \$5,000,000 capital of our bank" and elsewhere in the same issue to "its millions of dollars of capital" means the capital which it aimed and was still aiming to enlist. That no deception was involved in these allusions is evident from the fact that in the same communication to the public Mr. Lewis explicitly announces that the capital of the bank as yet was \$1,000,000, not more.

11. He states that nearly 2,000 presidents and cashiers of other banks were stockholders in the Peoples Bank. This was a fact.

12. He says, "I have pledged to you (the stockholders and depositors) my life's work and my fortune." The last refers to his holdings as previously described. There was in fact no moment of time when he was not actively employed in converting his holdings into cash to increase the capital of the bank. Had the laws permitted him to deed the property to the bank in exchange for stock, there would have been no delay in consummating the transaction, but the laws demand cash, and to find purchasers for the valuable stock of the publishing company and for the valuable stock of the real estate company without making too great a sacrifice were transactions that required time and opportunity. In the following month of March he had succeeded so far in this operation as to be able to raise the capital of the bank from one million to two and one-half millions, and the operation was in further progress when it was arrested by the needless and disastrous fraud order.

13. During the period from the organization of the bank to its stoppage a number of persons, owing to their own pecuniary needs or to death in the family or to other reasons, desired to lessen their intended holdings in the bank, and to this end requested their underwritings to the stock or their deposits intended for the savings department when opened to be returned by Mr. Lewis, in whose hands they had meanwhile placed them. In no instance were such requests refused, and in these transactions over \$200,000 were returned to the parties indicated. In fact, up to the actual acceptance of the stock certificate, and in many cases after, everyone was accorded by Mr. Lewis the privilege of withdrawing his investment in full at any time on request. These are not the acts of a swindler, but of an honorable and considerate man.

14. In concluding my observations upon these announcements of Mr. Lewis it is to be remarked, as a matter of some importance in its bearing upon their language and character, that all these announcements were made through the same medium, viz, the Woman's Magazine, and to the same people, viz, the subscribers to that periodical. Consequently they should in fairness be taken together, and what was said in one communication must be weighed with what was said in the others. To select a phrase or sentence from one announcement without balancing it with its context and with the other announcements, would be grossly unjust. Mr. Lewis was engaged in the organization of a novel and popular plan of banking by mail. His whole heart was in the matter. His entire fortune was destined to be merged into it, and much of it, far more than the combined holdings of all the others, was already pledged to it. In the case of its successful working he was to reap the principal benefit, and everybody was apprised of this and well knew it. On the other hand, in case of failure he was to become the principal loser, and the others knew this as well. In the opinion of thousands of responsible and experienced business men—an opinion in which the writer, after a careful examination of the circumstances, thoroughly concurs—the plan was sound, conservative, lawful, and destined to prove both

successful and profitable. As it depended entirely upon the mails, the Post Office Department could alone place any impediments in its way; and as it was in a legitimate manner bound to contribute very largely to the revenues of the Government, every confidence was felt in the impartial and considerate policy of that department toward a nascent and honorable enterprise. Until the department revokes its ill-timed and unnecessary fraud order such confidence must suffer great impairment. The plan of banking devised by Mr. Lewis will surely be followed by others, and the department will either have to constitute itself a general censor of business methods, and repeatedly exercise the most arbitrary measures, or else abandon its present attitude and quit interfering with the mails, except in those instances where the interrupted correspondence relates to schemes which, unlike the Peoples Bank, are in their nature fraudulent or obscene.

February 2, 1905. About this time appeared a series of libellous and defamatory articles in a St. Louis publication of low character entitled "The Mirror." No notice was taken of them either by Mr. Lewis or the bank, but they appear to have influenced the form of the charges furnished the department at Washington.

February, 1905. In this month some adverse criticism of the bank is believed to have been communicated to the post-office officials by a discharged employee, but nothing was known of it at the time and nothing definite now.

February, 1905. In this month Mr. Lewis, as the proprietor of the Woman's Magazine, wrote to the Postmaster General, inviting him to make any investigation he might decree proper concerning the relations of that periodical with his department. He also, as president of the bank, wrote to the secretary of state, John Swanger, as head of the State banking department, urging him to come personally or send his examiners in order that the officers of the bank might be guided by their advice. Nothing came of this.

March, 1905. To avoid the great tedium of replying separately to the numberless letters which were received asking for details concerning the plan of the Peoples Bank, and to afford the underwriters to the stock of the bank, the stockholders, and the depositors every information desired, Mr. Lewis, about this time, commenced to issue a new publication entitled "The Peoples United States Bank Reporter," consisting of 32, afterwards 16, pages, octavo, devoted exclusively to the affairs of the bank, its history, plan of operations, transactions, officers, the banking laws of Missouri, correspondence, etc. Three issues of this publication were made, one each in March, April, and May, when it was discontinued. In reviewing Mr. Lewis's communications to the public it will hereafter be necessary to include what appeared in these issues.

March 14, 1905. The capital of the bank was on this date increased to \$2,435,000 paid in. The whole amount of capital aimed at, that is to say \$5,000,000, was underwritten but not yet called in. Some of it was being paid in from time to time, some of it was still uncalled at this date, and some of it was never called in. The underwriters were so numerous and their places of residence so distant that an unusual length of time was required to conduct the correspondence necessary to complete these operations. The havoc occasioned by the Post Office Department can only be measured by the enormous mass of this correspondence and the time and labor it involved. It need only be observed here that the entire avails of the subscriptions were all lodged in the Peoples Bank; in short, that Mr. Lewis was continually putting money into the bank and never taking any money out of it. If this is fraudulent, the Post Office Department has discovered a new application of the term.

March 14, 1905. At this time the banking department of the State of Missouri, which is supervised by the secretary of state of that Commonwealth, conducted an examination into the affairs of the bank and certified that it had found them in perfect order, conformable to the laws and regulations in every respect. Experience abundantly proves that in the cursory and brief intervals, to which such examinations are commonly and necessarily limited, the actual solvency of a bank can not be satisfactorily determined. And especially is it not expected to have been determined by a department, which, like this one, issued a certificate of incorporation to this bank in November, 1904, without mentioning the number of shares into which the capital stock was divided. In short, the whole course of this state department from beginning to end indicated an astonishing indifference to legal requirements and business methods. Instead of furnishing a safeguard to the people, it afforded an opening to the class of political intriguants whose opportunity is found in some defenseless institution and whose reward is a lucrative receivership.

March 29. On this date the Peoples Bank took over as good, sound, and profitable investments the loans which Mr. Lewis had previously secured in other banks. This subject will be taken up further on.

April 8, 1905. In a paper entitled "Memorandum of the Postmaster General as embodied in a statement given to the press July 9, 1905," hereinafter described as "Mr. Goodwin's book," it is set forth that "until checked by the secretary of state of Missouri, Mr. Lewis endeavored to obtain proxies from all stockholders, appointing himself to vote the stock, etc., and that on April 8, 1905, the cashier of the bank (Mr. F. V. Putnam, formerly assistant cashier of the National Bank of North America, Chicago) told the inspectors that 4,381 shares of the increased capital stock had been issued and in every instance the shareholder had signed a proxy to the above effect." Mr. Goodwin's book continues: "This action of Mr. Lewis was contrary to his representations and indicates his intention to conduct the bank and handle the people's money for his own personal gain." The principal "people" here so feelingly alluded to included two or three thousand officers of other banks and as many other business and professional men, to say nothing of a vast number of small shareholders. Such a violent and absurd straining of a simple, necessary, and common practice does but little credit to either Mr. Goodwin's acumen or his candor. The secretary of state did not check or stop the asking or giving of proxies, nor was it any part of his business to do so. It is the usual practice on the part of officers of incorporated companies to ask for proxies and customary for stockholders to grant them. A proxy is a right to vote for the officers of the company, not a right to "handle," which can only mean to embezzle its funds. The giving of a proxy in this case was entirely optional with each stockholder. On the date mentioned there had been issued, as Mr. Putnam stated, 4,381 certificates of stock, many of them representing a single dollar or the one-hundredth part of a share. There were yet nearly 50,000 more certificates to be issued and it may here be stated that down to the date mentioned no proxies solicited by Mr. Lewis were refused; so that the cashier's statement, out of which Mr. Goodwin sought to distill a shameful inference, was, on the contrary, the strongest expression of confidence in Mr. Lewis which at that time was within the power of the stockholders to give. At a subsequent date they went much further. After the fraud order was issued they gave not only their proxies, but their stock itself to Mr. Lewis, most of them accepting in payment for it stock in his publishing company, whilst others refused any payment at all, at the same time repeating their undiminished confidence in his integrity. As it was a mail-order bank, whose stockholders were scattered all over the country, many in Europe and Asia, some in the distant isles of the Pacific, it was preposterous to expect the stockholders to meet and choose a board of directors. This could only be done by proxy, by the very means which Mr. Goodwin has chosen to stigmatize as dishonest and fraudulent. If in the exercise of the tremendous power with which Congress has clothed the Postmaster General, by enabling him to extend or withhold that so-called "privilege" of the mails, which in the modern growth of commerce has distinctly developed from a privilege to a right, he can find no better counsel than such as this to guide him in the exercise of the fraud order prerogative, then there is no security for any business enterprise in America; and foreigners and others living abroad may as well understand it. The publication of Mr. Goodwin's opinion in this case, its adoption by the Post Office Department, and its operation in continuing the fraud order against the Peoples Bank, constitutes a more fatal stab to the credit of American incorporated companies than all the railway and industrial failures of the past decade. It proves that no enterprise is secure from molestation without the personal approval of the post-office officials, and that such approval rests not upon law or evidence, but upon caprice and perversion.

May 17, 1905. On or about this date what purported to be an extract from the secret report of the St. Louis post-office inspectors was, as I am informed, set up in type in the office of the St. Louis Post-Dispatch. Should this date be verified, it indicates that a concerted effort was made to prejudice this case by influencing the public mind concerning its merits.

May 31, 1905. On this date the Post-Dispatch, an evening paper owned in New York by Mr. Joseph Pulitzer, but published in St. Louis, printed an inflammatory article, 14 columns in length, charging Mr. Lewis with being a swindler and the Peoples Bank with being a scheme to defraud the public. This article was embellished with half-tones which, together with other circumstances, indi-

cate that it was long in preparation, thus tending to verify the date above mentioned. Following is a digest of the charges as published:

Digest of post-office inspectors' secret report to Washington, published in St. Louis Post-Dispatch May 31, 1905.

1. That Mr. Lewis "obtained money and subscriptions for stock in the bank by exaggerations and misrepresentations of the security, safety, and profits to accrue to the subscribers of stock, promising to put in his own funds, dollar for dollar, for every subscriber, and then organized the bank so that Edward G. Lewis could and would control it without the voice of the stockholders and use the funds subscribed, or a large portion of them, for his own purposes and benefits." This is denied as untrue and malicious.

2. That Mr. Lewis had borrowed from the bank \$411,203 (the summation is really \$394,604) in various small sums, including \$146,375 "on account of promotion of bank," at time when the capital of the bank was only \$500,000, in derogation of the following laws:

"No officer or director of the bank shall be permitted to borrow of the bank in excess of 10 per cent of the capital and surplus without the consent of a majority of the other directors being first obtained at a regular meeting and made a matter of record," and "no bank shall lend its money to any individual or company, directly or indirectly, or permit them to become indebted or liable to it to an amount exceeding 25 per cent of its capital stock actually paid in." This charge is also denied as false and malicious.

The remainder of the charges are wild exaggerations of simple circumstances easily explained, and are not worthy of consideration.

In these complaints the post-office inspectors usurp the functions of State bank inspectors. As a matter of law I seriously question their authority or that of the Postmaster General to make such inquiries or charges, or the power of the latter under the acts of Congress to issue fraud orders upon such representations. It practically subjects the banking laws of the States to annihilation. It is impossible to suppose that such a result was intended by Congress.

June 1, 1905. Mr. Goodwin, upon his singular and unproved indictments in this case, of which more anon, obtained an order from the Postmaster General citing the Peoples Bank to answer a charge of conducting a scheme for obtaining money through the mails by false pretenses and promises.

June 5, 1905. At nearly the same time, as though prompted by a common impulse, Mr. John E. Swanger, the secretary of state of Missouri, "made a number of demands upon Mr. Lewis as to the future conduct of the bank, which corroborated the report of the inspectors as to the (past) condition of affairs," and required him to take up the loans above referred to under date of March 29 (Goodwin's book). Discussion of the loans is deferred to a future place in this report. Meanwhile we are at a loss to understand how a demand by the secretary of state regarding the future could corroborate a report of the inspectors relative to the past. If corroboration of a shameful insinuation is to be obtained by making demands upon the accused, then to Mr. Goodwin belongs the merit of having introduced into the United States a form of procedure of which both the juriconsults of the civil and common law were distressingly ignorant.

June 16, 1905. In response to the foregoing citation Mr. Lewis appeared at the Post Office Department, Washington, more than a thousand miles from his place of business, the informers, the inspectors at the St. Louis post office, being present but not obliged to testify under oath or be cross-examined. According to Mr. Goodwin's book of July 9 the offenses charged upon Mr. Lewis were as follows:

(a) "Relative to the amount of capital stock which Mr. Lewis had subscribed and would subscribe. * * * The Postmaster General found that in his early articles in the Woman's Magazine, etc., Mr. Lewis represented that he would subscribe one-half of the capital stock, and that later he represented that his subscription would exceed a million dollars. * * * The inspectors found that Mr. Lewis had not cooperated to the extent of a single dollar of his own money, and had so admitted on April 3, 1905."

(b) "Relative to the independent, strong, capable men who would compose the board of directors."

(c) "Representations that all funds of the bank would be loaned by a committee composed of the principal banks in St. Louis."

(d) "And that the funds would not be loaned to himself or other directors."

(e) "And that no man or body of men could ever get control of the bank or direct its funds from the absolutely safe lines laid down."

(f) "That he endeavored to obtain proxies from the stockholders."

(g) "That on June 5, 1905, the secretary of state of Missouri made a number of demands upon Mr. Lewis as to the future conduct of the bank, which corroborated the reports of the inspectors as to the (past) condition of affairs."

(h) "Mr. Lewis is receiving remittances for stock in his own name."

(i) "The bank has sought for deposits in the bank" * * * "and is receiving deposits."

(j) "Many other representations as to the success and great earnings of the bank, as to the advance of the stock to several times par, all found to be false and made for the purpose of deceiving."

"The Postmaster General, after a careful consideration of all the facts in the case and after considering all possible courses of action, decided that the interests of the public could be best protected only by the issuance of a fraud order against the bank and Mr. Lewis."

"It is the intention of the officers of the Post Office Department to cooperate with the secretary of state of Missouri in every proper way for the interests of the investors and depositors."

Such was the indictment given by Mr. Goodwin to the press nearly a month after the citation. At the latter there was no written indictment, no formal complaint, nothing tangible, but confused suspicions, implications, and insinuations, of which Mr. Lewis was required to prove himself "innocent," a course which was designedly rendered impossible. Mr. Goodwin was both accuser and judge. Upon such grounds and before such a tribunal any man may be convicted of any offense. It was not a trial; it was a gross travesty of justice. That the Postmaster General was afforded an opportunity to "carefully consider all the facts in the case," as alleged by Mr. Goodwin, we make bold to deny. He evidently assumed Mr. Goodwin's presentation of it to be sincere and unprejudiced, and upon this he acted. The Postmaster General has no time to examine the details of such cases. He must depend upon the reports of his assistants, and he has necessarily to assume that such reports are correct. It is a bad system which, in cases that under modern methods of business have grown to be of enormous importance, reposes plenary power in the hands of officials from whose decision there can be no appeal, and the sooner Congress amends it, the better. (Exhibit A.)

The attorneys who represented Mr. Lewis made ineffectual attempts to throw the citation into some legal form. They demanded a formal written indictment, they requested that the informers should be sworn, placed upon the witness stand, and subjected to cross-examination; they objected to the jurisdiction of Mr. Goodwin in the case, as not being an officer of the department; all of which demands and objections were overruled by Mr. Goodwin himself. The result was inevitable; the fraud order was issued July 6.

Congress has made the Postmaster General a criminal judge, when he has neither time nor opportunity to hold a court, impanel a jury, or sift evidence. It has thrown upon him a responsibility which he can not possibly discharge. It has clothed him with a prerogative of censorial amplitude, which he can not personally exercise and which therefore has become the plaything of his subordinates. The exigencies of his high office compel him to depend upon the latter, and when the latter err, he is obliged either to ignore the error, or bear the burden of it. The system is not only disastrous to the accused, it is unjust to the accuser.

July 6, 1905. Fraud order against Mr. Lewis and the bank issued by the Post Office Department, depriving them of the "privilege" of the mails. Order to go into force July 9.

July 9, 1905. Fraud order goes into force. Mr. Goodwin's book given to the press. Its contents are set forth under date of June 16.

July 10, 1905. The Peoples Bank applied by a bill in equity to the United States Circuit Court in Missouri (Judge Smith McPherson) for an injunction to compel Postmaster Wyman, of St. Louis, to deliver the mails addressed to the bank and to E. G. Lewis, withheld by the fraud order.

July 12. Restraining order issued by the United States circuit court to Postmaster Wyman to hold said mails until motion for injunction could be heard.

July 19. Decision of Judge McPherson in reference to injunction. This decision recites 22 or more questions of fact which the judge deemed should have been answered in the bill, or application for an injunction, and decides that the bill being thus deficient it must be rejected and the application denied. So far, the decision is purely technical and does not touch the main issue. This issue is: Was or was not the Peoples Bank a scheme for obtaining money through the mails by false pretenses and promises, as assumed or

alleged by the Post Office Department at Washington. The court declared that it had no power to decide this question, its decision resting entirely with the Post Office Department. Following are the words of the court:

"The Revised Statutes 3229 and 4041, as amended by Congress September 19, 1890, and March 2, 1895, provide in substance that the Postmaster General may, upon satisfactory evidence to him that any person or corporation is conducting any lottery gift enterprise or scheme, or device, for obtaining money through the mails, by means of fraudulent pretenses, or representations or promises, instruct the postmaster at the home office of such concern to stamp such mail as fraudulent and return the same to the sender when known from the envelopes, and all other mail shall be sent to the Dead Letter Office, to be by that office opened and then returned to the sender." * * * In this case "the Postmaster General made findings, and those findings can not be reviewed by this court." The decision renders Judge McPherson's recital both irrelevant and ridiculous; for, in effect, the former declares that even were the 20 odd irrelevant questions of the recital answered satisfactorily the court has no power to enjoin the Postmaster General, "whose findings of fact (it says) are not open to inquiry by the courts."

So far as the application for injunction is concerned, I fail to see that Judge McPherson could have arrived at any other decision. There was no question of law before him; only a question of fact, and in reference to fact, Congress has deprived the court of all jurisdiction by lodging such power exclusively in the hands of the Post Office Department.

On the other hand, Judge McPherson was himself guilty of a grave infraction of ethics in going out of his way to assume, in the absence of any trial of the case, that the Peoples Bank was a scheme to defraud. Here are his words: "On the allegations of the bill, knowing only the information thus imparted, it is strange that any intelligent person could be found who would invest a dollar in the bank; and a prudent and honest bank examiner would never, on the information conveyed by the bill, make a report indorsing such a bank." If the bill (the bill in equity) was insufficient or incompetent, respect for the truth withheld and common decency should have restrained the judge from entertaining an opinion which was both hypothetical and irrelevant; and it does but little credit either to the judge who published, or the post-office officials who industriously disseminate it, whenever application is made to them for information concerning the Peoples Bank. It makes the whole conduct of the case assume the appearance of spite, intrigue, and persecution, emanating from personal sources and employing for its ends the defective laws governing the Post Office Department.

A list of the persons whom Judge McPherson practically stigmatizes as fools by investing so much as a dollar in the Peoples Bank would include between two and three thousand officers of other banks, nearly as many leading and successful business men, and over 50,000 other intelligent Americans, who are fully competent to understand their own interests and capable to safeguard them if left free to do so by the post-office officials. This is proved by the almost unanimous action of the stockholders in disregarding the insinuations of Judge McPherson and repudiating the interference of the post-office officials, by accepting in lieu of their stock the very same securities which those officials too officiously deemed unsafe.

An appeal from Judge McPherson's disposal of the bill in equity made to the United States circuit court at St. Paul, Minn., was rejected upon the same technical grounds.

So much for the fraud order. A summary will now be given of the affairs of the bank since the promulgation of this edict, including a discussion of its finances and loans.

All letters and remittances addressed to the bank or to Mr. Lewis personally and sent through the mails have been seized and withheld by the postmaster of St. Louis. What has been done with them is unknown. Judging from the size and character of the mails previous to the issuance of the fraud order, they must amount to hundreds of thousands, perhaps millions of letters and remittances, involving vast sums of money. No intelligence whatever can be gained of them. Not only have the affairs of the bank thus been thrown into the greatest disorder, the interests of myriads of people have been destroyed or jeopardized and Mr. Lewis mulcted in losses and expenses which amount to more than a quarter of a million dollars. Of his disappointment and distress of mind nothing need here be said. Relying upon the support of his numerous friends, conscious of his own rectitude and confident that the truth will ulti-

mately prevail and carry him triumphantly through all his trials, he throws open his accounts and correspondence to every inquirer, bears his losses and expenses with stoicism and pursues his business plans with undiminished ardor. After more than 50 years' experience with mankind, during which period as an officer of the United States Government, I have come into contact with millions of people, I can honestly say that I have rarely met his equal for candor, probity, and business energy. Mr. Lewis was an unfortunate subject for the St. Louis officials to play upon. With the truth and justice, which I am confident are on his side, he will yet down them all.

Simultaneously with the attack upon the bank by the post-office officials, two other attacks were made upon Mr. Lewis's resources and credit. These were first, an attack by the post-office officials upon the Woman's Magazine, having for its object the denial of its right to use the mails as a periodical upon the terms and at the rates prescribed by Congress; and second, an attack by the secretary of state of Missouri, having for its object the closure of the bank in liquidation and the appointment of a receiver. Had both of these attacks proved successful, Mr. Lewis would have been deprived of every means of defense. The failure of one has enabled him to deprive the other of its worst effects.

On June 17, 1905, while in Washington responding to the forementioned citation relative to the bank, Mr. Lewis was also cited to show cause to the Post Office Department why the Woman's Magazine should not be deprived of its "second-class privilege" upon a complaint that it was published at a "nominal" rate and "primarily for advertising." To divest it of this right—for it is a right accorded by statute and not a mere privilege—would have been not only to deprive some millions of people of the paper they had paid for and desired to read, it would have deprived Mr. Lewis of the means to communicate with his friends and explain the condition of affairs, it would have robbed him of an income of over a quarter of a million dollars per annum, derived from profits on the sale of his publications and the advertisements they contained. Happily for the cause of justice that section of the Post Office Department to which this matter was referred was administered by an officer who took the trouble to examine into it himself, and the result was a complete exoneration of Mr. Lewis and dismissal of the complaint. This citation, in the temporary influence it had upon its advertising patronage, cost the Woman's Magazine some \$50,000 or \$60,000; but it has since recovered all this lost ground and more, so that now, as I am informed, it is a more profitable paper than ever.

The attack by Mr. Swanger, the secretary of state of Missouri, culminated on July 10, the day after the fraud order went into force. It was made in the form of an application of the attorney general of Missouri, without a petition from any stockholder, depositor, or creditor, to appoint a receiver for the Peoples Bank on the ground of its insolvency. The receiver appointed under this application was Mr. Selden P. Spencer, an intimate friend of Mr. Swanger, who charged \$2,000 a day for his services and retained \$12,000 out of the bank's funds with which to pay himself for the first week's work. Upon appealing for redress to the St. Louis County circuit court, Judge McElhinney, at Clayton, Mo., this magistrate on July 17 set aside and vacated the appointment of Mr. Spencer, ordered the property of the bank to be delivered to its officers, and admitted in a written opinion that there was no occasion to appoint a receiver, and that his own previous order to that effect was "without authority or jurisdiction." On July 22 Messrs. Thomas F. Meyer, James F. Coyle, Gov. Lon V. Stephens, and W. F. Carter, the secretary and directors of the bank, all citizens of St. Louis and of the highest commercial and social character, united in a letter, published in the September issue of the magazine, expressing their continued confidence in Mr. Lewis's integrity, "and that so far from his bank project being a fraudulent scheme, we believe it embodies valuable and useful ideas, and that his efforts to promote its success were inspired by worthy and honorable purposes." (Exhibit B.)

In the face of this testimonial, than which, considering the standing of the gentlemen who offered it, nothing could be more assuring, the secretary of state of Missouri succeeded in having Mr. Frederick Essen appointed to take charge of the property of the bank and wind up its affairs; and thus in spite of a full treasury and a respectable, honest, and conservative administration fell the Peoples Bank. The best epitaph that can be written upon it is the receivers' report, which will show that its depositors were paid or have been offered to be paid in full, and that its stockholders will receive back about 90 per cent of their subscriptions, the balance and profits being absorbed by the expenses

occasioned through the arbitrary and unjust fraud order obtained by Mr. Goodwin from the Post Office Department and the cost of the two receiverships.

The loans.—We have reserved this subject to the last in order that the narrative might not be interrupted.

I. In March, 1905, and in order to increase his subscription to the capital stock of the Peoples Bank, Mr. Lewis, as treasurer of the University Heights Realty & Development Co., and as a private individual, proposed to the bank a loan of about \$400,000, based upon the following mortgages or securities as collateral:

Security No. 1: 44,539 front feet of University Heights improved city lots, valued, as per certificate below, at \$1,406,435 (12,318 front feet, or about one-fourth of this, has since been sold for \$407,584 cash)	\$1,406, 435
Security No. 2: The lofty octagonal stone building, interior in polished marbles and bronze, occupied as offices of the Woman's Magazine, together with the printing annex, the whole having a rental value of \$60,000 per annum and costing in cash upward of.	600, 000
Security No. 3: Mr. Lewis's private residence, in which he still lives, on University Heights, consisting of a handsome Elizabethan mansion with extensive grounds and improvements, having a rental value of \$10,000 per annum, and for which he has since been offered.	100, 000
Security No. 4: Ten other private residences on the same property having a rental value of about \$10,000 per annum and valued at.	90, 000
Total securities	2, 196, 435

This loan, accepted by the bank, was designed to take up and consolidate a number of small liens, amounting in the aggregate to about the same sum of \$400,000, which liens had previously been made with other banks and trust companies while the property was undergoing improvement. With the liens thus consolidated, preparations were made by the realty company to borrow upon the same property and in the open market (not from the Peoples Bank) the sum of \$750,000 with which to pay off and cancel the consolidated loan of \$400,000 from the Peoples Bank, leaving the realty company a margin of \$350,000 cash. Already more than half of this new loan of \$750,000 was taken up by other parties than the Peoples Bank, which by the way was not asked to take any part and did not in fact take any part of it, when a blunder in the engraving of the bonds caused a delay which postponed the issue until the fraud order rendered it for a time abortive and impracticable.

Concerning the generous amplitude of the security offered to the Peoples Bank for its loan of \$400,000, there is not only the certificate appended below (Exhibit C) but also the fact that upon the same security other banks and individuals had previously loaned an equal amount; that upon the same security other banks and individuals afterwards subscribed more than half of a proposed blanket mortgage of \$750,000, the whole of which was offered to be taken by a local trust company for a commission of 5 per cent, terms which were declined; and the fact that one-fourth of the vacant lots alone has since been sold for an amount roughly equal to the entire amount loaned by the Peoples Bank. To characterize such a transaction as fraudulent or unsafe is an act either of virulent hostility, proceeding from some other motive than a desire to protect the bank or the public, or else the effect of simple lunacy.

II. About April, 1905, a loan of \$400,000 at 5 per cent was proposed to and accepted by the Peoples Bank upon the following securities:

Security No. 1: The going plant and equipment of the Lewis Publishing Co., costing more than.	\$800, 000
Security No. 2: The good will, stock, and accounts receivable of the same going company, valued at.	1, 500, 000
Total securities	2, 300, 000

This loan was indorsed by Mr. Lewis individually. As evidence of the value jeopardized, it should be stated, first, that the bank was authorized to more than a securities of loan No. 1 in additional pledge until loan No. 2 was mind nothing of, that at the time mentioned the Lewis Publishing Co. was friends, conscript of about a quarter of a million dollars per annum, and that the proceeds three months were \$74,000; third, that this

loan was effected in order to take up a like amount, which Mr. Lewis had previously borrowed from other banks without pledging any securities at all, either of the realty company or of the publishing company; fourth, that the loan was coupled with an undertaking on the part of the publishing company not to increase its loans by borrowing from other sources until the present loan was paid, so that this loan should constitute its entire indebtedness; fifth, that the loan was effected upon the condition that alternately \$10,000 or \$15,000 of it should be paid off monthly; sixth, and that such \$10,000 or \$15,000 per month and more has been actually paid on the loan, so that the whole amount of it was paid off two years before it fell due.

III. This was not a loan, but as Mr. Lewis and five other directors, pending the legal inquiry which they have demanded, in order to definitely determine its validity and relation to the Peoples Bank, have gratuitously signed a joint note for its full amount, for which note they received no consideration whatever, it becomes necessary to mention it again in this place. This is the \$146,000 expended for promoting the bank, the plan to dispose of it being to charge off a small amount to the bank each year until the whole is paid. The items composing it and the vouchers attached have been minutely scrutinized by the new board of directors, men especially approved by the secretary of state as of the highest integrity, responsibility, and experience, assisted by expert accountants, and declared correct to the last dollar.

ALEX. DEL MAR.

EXHIBIT A.

LETTER OF HON. GEORGE H. SHIELDS, FORMERLY ASSISTANT ATTORNEY GENERAL OF THE UNITED STATES UNDER PRESIDENT HARRISON.

ST. LOUIS, August 12, 1905.

Mr. E. G. LEWIS,

President Peoples United States Bank, St. Louis, Mo.

DEAR SIR: You asked me to state what took place before Hon. R. P. Goodwin, Assistant Attorney General for the Post Office Department, in reference to the fraud order against you and the Peoples United States Bank on June 16, 1905.

A few days before that date I had been employed to assist Judge Barclay in presenting that matter before the Post Office Department. On that day we appeared before the said Assistant Attorney General, and after introductions he stated he was ready to hear our reply to the charges, a memorandum of which, signed by the Hon. E. W. Lawrence, assistant attorney, had been previously sent to you and the bank.

We replied we were ready to hear what the Government had to offer in support of the charges, and were informed that the report of the post-office inspectors who had investigated the subject had been read by the Hon. R. P. Goodwin, and that it was assumed that the facts stated in these reports were true, and unless satisfactorily explained by the respondents action would be taken thereon on the assumption that the charges were true.

The respondents filed answers in writing to the charges under oath, denying the same, that of the bank being general and yours being more specific and explanatory.

We insisted that as the charges were quasi criminal that the Government should sustain the same by testimony. The reply was that the reports of the inspectors were before the Assistant Attorney General; that the reports of the inspectors had been read by the Assistant Attorney General and would be considered as true. We asked to see the reports of the inspectors and to cross-examine them on their said reports, and this was refused on the grounds that the reports were confidential.

No witness or documentary testimony was offered on the part of the Government. The respondents were informed that they could offer anything they had in reply to the charges.

Finding we could not see the report or hear what the Government relied on to sustain the charges, the respondents then offered both oral and documentary testimony on their behalf. The counsel for the respondents were permitted to argue the matter as best they could without knowing what was contained in the very voluminous and secret report of the post-office inspectors, and with-

out privilege of examining them on their report. Counsel for the Government made no argument. A motion was made by the respondents to dismiss the proceeding for want of jurisdiction and because the respondents were not permitted to see or hear the evidence against them, and because they were not confronted by the witnesses against them, and on other grounds violative of their constitutional and legal rights, and the Assistant Attorney General refused to pass upon said motion.

Yours, truly,

GEORGE H. SHIELDS.

EXHIBIT B.

RESOLUTIONS OF BOARD OF DIRECTORS, JULY 22, 1905.

Resolved. That the board of directors of the Peoples United States Bank express their confidence in Mr. Lewis's integrity and good intentions and their sympathy with him in the war of persecution being waged upon him and his interests. After close business relationship with him for a considerable time, his associates in this directory are convinced that he is an honest and sincere man, of rare and tireless energy, and that, so far from his bank project being a fraudulent scheme, we believe it embodies valuable and useful ideas, and that his efforts to promote its success were inspired by worthy and honorable purposes.

Resolved. That we deem it a grave subject for the consideration of the American people, how a bank like this, representing investments of more than two millions of dollars, may have its credit instantly destroyed by a despotic order of a Federal officer without opportunity to know on what evidence it is condemned, and (as Judge McPherson, a Federal judge, of Red Oak, Iowa, has declared) without any possibility of review by the courts of our country. Such a condition of affairs involves an interpretation of our laws which we regard as a menace to the liberty and rights of every citizen. We protest against such interpretation, and we declare that this bank is not a scheme to defraud anyone by any means, fraudulent or otherwise.

Directors:

THEO. F. MEYER, *Secretary,*
President Meyer Bros. Drug Co.

W. F. CARTER,
Director Missouri-Lincoln Trust Co.

LON V. STEPHENS,
Ex-governor and ex-treasurer State of Missouri.

JAMES F. COYLE,
Coyle & Sargent.

EXHIBIT C.

St. Louis, November 1, 1905.

At the request of Mr. E. G. Lewis, we take the liberty of addressing you this communication to state to you that we have sold for the University Heights Realty & Development Co. 12,318 front feet in section 1 for \$407,594.41.

The remaining property in section 1 amounts to 7,821 front feet. The property belonging to said company, which is known as sections 2 and 3, comprising 10,400 front feet, is the most desirable part of all of the property owned by the company, and lays exceptionally fine for the highest class residence property of this city, and yet remains to be sold.

Section 4 is nearly on par with section 1, consisting of 14,000 front feet, and remains to be sold.

In our opinion, the unsold property above referred to, consisting of 32,221 feet, will average about \$31 per front foot, making a total value of \$1,000,000.

We would like further to call your attention to the fact that this property must be in demand, as St. Louis's growth continues, for the simple reason that it is in what is known as our high-class west end residence district, in which 90 per cent of our high-class residence homes are located. We wish to further state that our company is the largest operator in real estate in the city of St. Louis, and in the first six months of this year handled a business amounting

to \$10,000,000. Therefore we think you can take the statement made by us as being authority on the question of values of real estate in the city of St. Louis.

The above estimates and sales do not include any of the buildings or residences in University Heights or property on which they are located, but is for the vacant property only.

HOLBROOK-BLACKWELDER REAL ESTATE TRUST CO.,
By W. J. HOLBROOK, *President*.

PEOPLES UNITED STATES BANK.

Capital, \$2,500,000.

Frederick Essen, Receiver.

ST. LOUIS, Mo., *February 5, 1906.*

HON. ALEX DEL MAR, *New York City.*

DEAR SIR: In reply to your inquiry I beg to state that every loan and investment held by the Peoples United States Bank has been liquidated one hundred cents on the dollar, with interest in full to date.

The depositors are being paid in full, and I have already declared dividends to the stockholders of 85 per cent.

Respectfully,

FREDERICK ESSEN,
Receiver, Peoples United States Bank.

(Exact copy.)

Mr. MCCOY. Was this bank organized under the laws of the State of Missouri?

Mr. MADDEN. Yes, sir; it was chartered by the State of Missouri.

Mr. MCCOY. And conducted under your banking department?

Mr. MADDEN. Yes, sir. The law clothes the secretary of state with power to charter such institutions, and he had made an investigation about the same time as these inspectors made their investigation, and gave the bank a clean bill of health.

Mr. ALEXANDER. Then, the evidence in the record discloses that ex-Gov. Lon. V. Stephens, ex-governor of the State of Missouri, had been a director in the bank. He had been the State treasurer for many years, and was entirely familiar with banks in the State of Missouri.

Mr. AUSTIN. Do you have State banks there?

Mr. ALEXANDER. We have a state banking department and very strict banking laws. No State in the Union has better banking laws than Missouri.

Mr. AUSTIN. And the State bank examiners or inspectors found no fault with this bank?

Mr. ALEXANDER. I do not know.

Mr. MADDEN. Subsequent to the issuance of the fraud order, at the instance of the inspectors, as their report showed was the intention, President Lewis, of the bank, was indicted six different times for having devised a scheme (the bank) to defraud through the use of the mails. These indictments were published broadcast and gave color of right to the fraud order, because this latter act appeared to be and technically was an act of the Department of Justice. The officials of both departments, however, resisted to the utmost on one excuse or another the bringing of any one of these indictments to trial, the provision of the Constitution that "the accused shall enjoy the right of a speedy and public trial" to the contrary notwithstanding. It

was two years before the first of these indictments was gotten into court. In the meantime the officials were industrious in getting the facts that a fraud order had been issued and that the president of the bank had been indicted before the public.

When finally the first indictment came into court for trial and all the evidence which the officials could present had been submitted (this was the "evidence satisfactory to him," the Postmaster General, and upon which he had issued the fraud order), the presiding United States judge took the case from the jury on May 14, 1903, and ordered a verdict of not guilty. Among other things the court said:

It is all sufficient for me to say in conclusion that, after carefully reviewing the evidence, the court is of the opinion that the evidence of the good faith of the defendant is overwhelming and that the charge of fraudulent purpose in devising and carrying the scheme into effect is not sustained.

Mr. McCoy. Are you quoting from the court's opinion?

Mr. Madden. Yes.

Mr. McCoy. I want to have that made clear.

Mr. Madden. That was what the court said. A certified copy of the memorandum of the court from which the foregoing is taken is submitted and marked "Exhibit No. 4."

EXHIBIT No. 4.

United States v. E. G. Lewis—No. 5315.

JUDGE'S MEMORANDUM.

At the conclusion of the testimony the defendant's counsel moved the court to instruct the jury to return a verdict of not guilty. Upon this motion the court invited argument, and the argument of counsel, together with the evidence given upon the trial, have been intently and deliberately considered, and we now proceed in a brief way to a disposition of it.

If this motion is well taken, the trial ends. It becomes important and necessary, therefore, to determine this question before proceeding further in the case; and where counsel rely upon it, it is the practice to, as was done in this case, present this question for the consideration of the court at the conclusion of the testimony.

The indictment charges the defendant in proper form with having devised a banking scheme to defraud certain persons therein named and others, and as a part of that scheme that he intended to and did use the mails of the United States for the purpose of putting it into effect, in violation of section 5480 of the Revised Statutes of the United States as amended.

Much testimony has been taken by both sides along the same general lines. Indeed, there is really no conflict as to the principal facts. The evidence shows conclusively that the defendant did devise the scheme to establish this bank, and that he intended as a part of the scheme to, and that he did, use the United States mails for the purpose of carrying the scheme into effect. The fact of the existence of the scheme and the method of carrying it into effect being established, we pass to a consideration of the other and all-important question: Was the scheme devised by the defendant with the purpose and intent to defraud? This question we are to determine from the facts surrounding the transaction as disclosed by the evidence. This and kindred questions are ordinarily, and in all cases where the court entertains a doubt, left to the determination of a jury, and it is quite true that the court should be very careful in all cases not to exercise or assume powers which do not properly belong to it; but it is equally true that it should never hesitate to perform its full duty, regardless of the question whether the result of its judgment may please or subject it to criticism. When a question like this is presented, and the only alternative is a dereliction of duty or the possible criticism of the public, the man has no business on this bench who would hesitate for one moment which to adopt.

The Government, as suggested during the trial, is interested in this prosecution; interested in two ways: First, to see to it if this defendant has violated the laws of his country, that he is fairly tried and punished for his crime; and, second, if his guilt is not established, then to see to it that he is promptly acquitted of the charges against him.

Counsel for the Government have performed their duty in this respect and have presented the case fully, and, the court thinks, fairly. But in this, as in every other case, there is a preliminary question to be determined by the court at this stage of the proceedings, and it is this: Giving to the jury the broadest latitude to draw every inference which 12 reasonable men might properly and lawfully draw from the evidence, would the court be willing to accept a verdict of guilty as a basis for a judgment of conviction? While I do not anticipate that such a verdict would be reached by the jury if the court should see proper to submit the case to them, yet I am free to say that the court, leaving out of consideration the testimony of the defendant, could not under the evidence permit such a verdict to stand and would feel bound to set it aside. I say without reference to the defendant's testimony. It is but fair to add, however, that his testimony, his demeanor upon the stand, his full disclosure of all the facts surrounding the case, tends to strengthen the views here expressed.

I shall not take the time to review the evidence at length, but consider it all sufficient for our purposes in disposing of the case to say that the scheme devised and carried into effect by the defendant appealed not only to persons unfamiliar with the banking business, but also to bankers, officers of trust companies, to vice presidents and general managers of railroads, and others whose life work is to deal with such questions. That the defendant was a man whose character among business men was above reproach has been repeatedly testified to by reliable men upon the witness stand. They had faith in his scheme and subscribed for the stock of the bank, and they have faith in it yet. Certain it is that the defendant did not personally profit by it. That the course taken by him to fully reimburse all of those who had joined in the enterprise, and his success in that respect, under very trying circumstances, is to my mind the best evidence of the lawful purpose of the scheme. While I am free to say that upon its face the scheme seems to some of us who are accustomed to more conservative methods of transacting business rather visionary, yet as stated by the Supreme Court in the case of *Durland v. United States* (161 U. S., 306), if the defendant "entered in good faith upon that business, believing that out of the moneys received he could, by investment or otherwise, make enough to justify the promised returns, no conviction could be sustained, no matter how visionary might seem the scheme."

It is all sufficient for me to say in conclusion that after carefully reviewing the evidence the court is of opinion that the evidence of the good faith of the defendant is overwhelming and that the charge of a fraudulent purpose in devising and carrying this scheme into effect is not sustained.

Under such circumstances it is the plain and bounden duty of the court to direct a verdict and to end the trial. In support of this view I call counsels' attention to the cases of *Phoenix Mutual Life Insurance Co. v. Doster* (106 U. S., 30); *Connecticut Mutual Life Insurance Co. v. Lathrop* (111 U. S., 612); *Inhabitants of Mount Clair v. Dana* (107 U. S., 162); *Monroe v. British Foreign & Marine Insurance Co.* (3 C. C. A., 280); *Chicago & St. Paul Railway Co. v. Belliwith* (28 C. C. A., 358); *Peoples Savings Bank v. Bates* (120 U. S., 556).

In the last case the Supreme Court said: "The statutory rule making the question of fraud or good faith a question for the jury does not prevent the court from giving a peremptory instruction when the evidence is substantially all one way."

Many other cases to the same effect might be cited. Indeed, I think it is the well-established rule that it is not only the privilege but the bounden duty of the court to so dispose of the case when satisfied that no other verdict could be permitted to stand.

I desire to express to counsel upon both sides of this case my appreciation of the fairness and evidence of a candid purpose upon their part to present to the court the whole case which has characterized this trial.

UNITED STATES OF AMERICA,

Eastern division of the eastern judicial district of Missouri, ss:

I, W. W. Nall, clerk of the District Court of the United States, in and for the eastern division of the eastern judicial district of Missouri, do hereby certify that the writing hereto attached is a true copy of the judge's memorandum in

case No. 5315 of the United States, plaintiff, *v.* Edward G. Lewis, defendant, as fully as the same remain on file in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in the eastern division of said district, this 28th day of December, in the year of our Lord 1910.

[SEAL.]

W. W. NALL, *Clerk of said Court.*

(Endorsed:) No. 5315. United States District Court, eastern division of the eastern judicial district of Missouri. The United States, plaintiff, *v.* Edward G. Lewis, defendant. Duly certified copy of the judge's memorandum in the above-entitled cause.

The CHAIRMAN. Had you better not withhold that until you introduce your testimony?

Mr. MADDEN. All right.

Mr. AUSTIN. I would like to insist upon it all being read now.

Mr. BRITT. May I make an inquiry? Mr. Madden disclaims authority or credentials for representing the Lewis Publishing Co. in the matter of the Peoples United States Bank. There are no specifications of improper conduct on the part of the Post Office Department in relation to that institution set forth in the several allegations of complaints filed against the department. Since the matter has been brought into the inquiry and discussed at length, several phases of it gone into, and reports and opinions in relation to it read into the record, I now desire to ask if the department will be permitted to make a full response to this part of the accusation involving all the matters and holdings in relation to the Peoples United States Bank, this being a charge as to which it was not put upon notice in the specifications originally filed.

The CHAIRMAN. The department will have the opportunity to answer the charges in every respect. The inquiry will be just as broad as the charges.

Mr. BRITT. I understood that; but since this was not in the original charge I wanted to make sure of that fact.

Mr. AUSTIN. Let the record show that I insist that it all shall be read.

The CHAIRMAN. The exhibit should be retained until you introduce your proof, I think, and should not go in with your present statement.

Mr. MADDEN. I might be permitted to reply to Mr. Britt here that the department issued public statements concerning this, and I have copies here to submit. I did not intend to leave the department without its defense. I do not expect that.

The CHAIRMAN. Proceed with your statement.

Mr. MADDEN. As before stated, the fraud order against this bank was issued July 6, 1905. It took effect in St. Louis July 9, three days later. Then the Post Office Department issued a pamphlet entitled "Memorandum of the Postmaster General as embodied in a statement given to the press July 9, 1905." I had here marked for insertion a copy of that statement, but the chairman suggests that I withhold it.

The CHAIRMAN. I think that would be the best course to pursue.

Mr. MCCOY. Mr. Madden might state that at the proper time he will introduce this statement as an exhibit and ask that it be marked.

Mr. MADDEN. I will say that. I will introduce this statement now as an exhibit and ask that it be marked "Exhibit No. 5."

EXHIBIT No. 5.

Memorandum of the Postmaster General, as embodied in a statement given to the press July 9, 1905, in relation to issuance of a fraud order July 6, 1905, against the Peoples United States Bank, its officers and agents as such, and E. G. Lewis, of St. Louis, Mo.

A fraud order against the Peoples United States Bank, its officers and agents as such, and E. G. Lewis, St. Louis, Mo., was issued by Postmaster General Cortelyou July 6, and went into operation July 9. The decision of the Postmaster General was reached after a full hearing of the case by the Assistant Attorney General for the Post Office Department, who recommended the issuance of a fraud order, and upon an opinion of the Attorney General, dated July 6, holding that the Postmaster General was legally justified in issuing the order.

In response to a citation to show cause why a fraud order should not issue against them the Peoples United States Bank and E. G. Lewis appeared before the Assistant Attorney General for the Post Office Department on June 16 in the persons of George H. Shields and Shepard Barclay, attorneys, and E. G. Lewis, Frank J. Cabot, and H. L. Kramer, and made answer to the charges. Inspector in Charge Fulton and Inspectors Sullivan and Stice, who had made a thorough investigation of the bank's affairs at St. Louis and had recommended the issuance of a fraud order, also attended the hearing. The Assistant Attorney General laid the results of the hearing before the Postmaster General, who immediately gave the matter his attention.

The evidence in the case showed that Mr. Lewis used the mails as his principal agent in promoting the sale of stock in his bank and securing deposits in the bank. The Peoples United States Bank was organized to transact all of its business by the use of the mails. The plan was to receive savings deposits, carry on a certified-check system, and do exclusively a mail-order banking business. Mr. Lewis began the promotion of this bank in the Woman's Magazine for February, 1904, and has in all subsequent issues of the Woman's Magazine extensively advertised this bank. Among the false and fraudulent representations and promises which the Postmaster General found Mr. Lewis had made in the promotion of his scheme were those relative to the amount of capital stock which Mr. Lewis had subscribed and would subscribe; representations relative to the independent, strong, capable men who would compose the board of directors; representations and promises that all funds of the bank would be loaned by a committee composed of 15 directors of the principal banks in St. Louis, and that the funds would not be loaned to himself or other directors. The Postmaster General found that in his early articles in the Woman's Magazine and in his other advertising literature about the bank Mr. Lewis represented that he would subscribe to the capital stock a dollar for every dollar subscribed by all others, so that he would own half of the capital stock, and that later he represented that he had pledged his entire fortune, every dollar he had, and his publishing business in this banking enterprise, and that his subscriptions would exceed a million dollars. These representations were found to be false and made with intent to deceive.

The inspectors found that Mr. Lewis had not cooperated to the extent of a single dollar of his own money, although the bank had been in operation seven months and had a paid-up capital stock of \$2,000,000. The inspectors found that Mr. Lewis had made an admission to that effect to Bank Examiners Cook and Nichols on April 3, 1905. The inspectors and their office force in St. Louis made a careful checking of the subscription books, finding that on March 15, 1905, Mr. Lewis had received and held as payment for shares of stock in the bank \$2,289,043.61, and had accounted to the bank in an amount not exceeding \$2,204,993.65. This showed that every cent of the \$2,000,000 capital stock which had been paid in was paid out of subscription money received by Mr. Lewis from the public, and that none of his own money had been invested in the enterprise. This was found to be the fact, although Mr. Lewis had stated in writing to the inspectors that \$495,750 of the \$500,000 paid in at the original incorporation of the bank were his personal funds. Subsequently at the hearing before the Assistant Attorney General Mr. Lewis admitted that that money was received by him from the people, and was not his own. Although asked to do so at the hearing, Mr. Lewis failed to produce any evidence whatever that any of his personal funds had gone into this enterprise, or that he ever intended to subscribe, or was in a financial condition to subscribe, for the large amount of stock which he represented he would take.

Contrary to Mr. Lewis's representations that the board of directors of this bank would be composed of seven independent, strong, capable men, "practically retired from active business," "standing between the intrigue and influence of the cold-blooded banking business and the people's money," the Postmaster General found that the directors chosen for the first year consisted of the five following persons: E. G. Lewis, Frank J. Cabot, editor of two magazines practically owned by Mr. Lewis; Augustine P. Coakley, E. W. Thompson, and G. A. Arbogast, employees of the Lewis Publishing Co., which is under the control and management of Lewis. These men could not reasonably be presumed to guard the interests of the stockholders as Mr. Lewis represented they would. That they did not "guard the interests of the people," but complied with every request of Mr. Lewis for the loan of money is evidenced by the fact that hundreds of thousands of dollars were loaned to Mr. Lewis and his enterprises. Mr. Lewis stated at the hearing that the directors had never refused to make a loan he requested. At that time he was also asked to show the vote of the board of directors for a loan of \$50,000 to himself on his personal note. He thereupon showed, in the book where the votes of the directors were recorded, a blanket approval by the board of all loans previously made, it being dated 10 days subsequent to the loan.

The most important of the representations and promises which Mr. Lewis made and those which he repeated and emphasized most were to the effect that all funds of this bank would be loaned by a committee composed of three directors each from the five principal banks of St. Louis; that all loans which the board of directors might desire to make must first be passed upon by this committee of 15, and thus absolute security assured that the funds could not be loaned to himself or other directors; and, further, that the capital of the bank would be invested in Government bonds and other equally good securities. These representations were repeatedly and persistently made by Mr. Lewis from the beginning of his operations to the present time. In connection with them he frequently dwelt upon the dangers threatening banks in permitting officers and directors to receive loans. He said that "enterprises in which the officers and directors may be personally interested frequently have courtesies extended to them and money advanced them, which if publicly known would put the bank out of business."

The evidence showed, and Mr. Lewis admitted, that hundreds of thousands of dollars were loaned to himself and his various enterprises; that no committee of 15 had been established, but that the loans had been made practically at Mr. Lewis's will. On March 15, the day after the inspectors began their investigation in the bank, Mr. Lewis placed in its assets two notes—one for \$50,000 signed by himself alone, without collateral; the other for \$146,375.63, signed by the board of directors. Mr. Lewis received no money from the bank at that time, the notes being put into the bank to cover money previously expended by Mr. Lewis. The last-mentioned note Mr. Lewis claimed covered money spent in promotion of the bank; but, as the secretary of state of Missouri declined to allow the item, it stands as a personal loan to the directors. On March 15 Mr. Lewis had loaned from the bank's funds to himself and his enterprises \$394,604.63, the paid-in capital stock of the bank then being half a million.

On March 29, when \$2,000,000 capital stock had been paid in, a statement furnished by Mr. Lewis at the hearing, upon request, showed that he had loaned to himself and his enterprises \$907,538.83. These loans include \$146,375.63 to the directors, \$390,000 to the Lewis Publishing Co., \$346,163.20 to the University Heights Realty & Development Co., and \$25,000 to E. G. Lewis. At that time Mr. Lewis had \$43,730 of the bank's money invested in stocks and bonds of his enterprises. The evidence further showed that Lewis had agreed to loan \$66,666.66 of the bank's money on an unsecured note, but was prevented from doing so by Secretary of State Swanger. The University Heights Realty & Development Co., which had borrowed from the bank \$346,163.20, and the stock of which to the extent of 1,277 shares Mr. Lewis sold to the bank, is shown to have assets consisting for the most part of land purchased for \$200,000 as a speculation in suburban property, and upon which Mr. Lewis stated about \$150,000 had been expended in improvements. Its liabilities are shown to be \$674,700.53.

The evidence also shows that Mr. Lewis made false and fraudulent representations to the effect that no man or body of men could ever get control of the bank or divert its funds from the absolutely safe lines laid down. Many other representations as to the success and great earnings of the bank, as to the advance of the stock to several times par, are found to be false and made for the purpose of deceiving.

It appears, further, that until checked by the secretary of state Mr. Lewis endeavored to obtain proxies from all stockholders appointing himself to vote the stock, which proxies should remain in force for three years at least, and in case revocation was desired in that time Mr. Lewis was to have opportunity to purchase the stock. On April 8, 1905, the cashier of the bank told the inspectors that 4,381 shares of the increased capital stock had been issued, and in every instance the shareholder had signed a proxy to the above effect. This action of Mr. Lewis was contrary to his representations and indicates his intention to conduct the bank and handle the people's money for his own personal gain. It is in direct contravention to the many representations that this would be the people's bank and subject absolutely to the control of the people.

It appears that on June 5 last John E. Swanger, secretary of state of Missouri, made a number of demands upon Mr. Lewis as to the future conduct of the bank, which corroborated the report of the inspectors as to the condition of affairs above outlined. Since these demands, which, among other things, required immediate return to the bank of all funds borrowed by Mr. Lewis and his enterprises, Mr. Lewis has failed to pay the loans.

Mr. Lewis is receiving a large number of remittances for stock in the bank in his own name. The bank, through Mr. Lewis, its president, has sought remittances of money for deposits in the bank. These deposits are sought upon the same representations and from the same people as in the sale of stock. Upon these the bank is receiving remittances as deposits. It further appears that it is the intention of the bank to increase its stock to \$5,000,000, and remittances are being asked for on that account. It is impossible to separate the bank from Mr. Lewis in this matter. The Attorney General, to whom the Postmaster General submitted the matter for an opinion, said.

"I think there can be no doubt, upon the facts submitted, that E. G. Lewis, the maker of these representations and promises, is to be regarded as conducting a 'scheme or device for obtaining money through the mails by means' of them. The facts stated represent him as the creator of the bank and absolute master of its charter, directors, stock, and funds, and as diverting those funds into the hands of himself and certain associates by way of loans to various companies of which he is the principal member.

"The existence of a charter of incorporation—another legal 'person'—affords no protection to him. A corporation can be used as an instrument for the violation of law. * * *

"As for the bank and its mail, we may, upon the facts stated, treat the constant public representations of its president, made with its acquiescence, and their fruits accepted by it, as its own, or look upon it as an 'agent or representative' of Lewis in the reception of the mail.

"The bank seems, according to the facts stated, to be no other than Lewis himself, under a thin disguise."

The Postmaster General, after a careful consideration of all the facts in the case and after considering all possible courses of action, decided that the interests of the public could be best protected only by the issuance of a fraud order against the bank and Mr. Lewis.

It is understood that the funds of the bank which have not been borrowed by Mr. Lewis and his enterprises, amounting to about two-thirds of the total amount remitted, are deposited in banks and will be available toward reimbursement of the stockholders, who number upward of 65,000. It is the intention of the officers of the Post Office Department to cooperate with the secretary of state of Missouri in every proper way for the interests of the investors and depositors.

Washington, July 9, 1905.

This pamphlet purports to state the reasons for the issuance of the fraud order, but includes only the Postmaster General's side of the case. It does not include the June 12th letter of the secretary of state of Missouri. It does not state that any person had complained concerning this bank. It does not identify the statute under which the Postmaster General assumed to send his inspectors into the bank to search its books and papers to find a basis for "charges" which the bank should be called upon to "satisfactorily explain," and which should be used to secure criminal indictments of the president.

According to this pamphlet, this bank case was submitted to the Attorney General for an opinion.

Mr. AUSTIN. You mean the Attorney General of the United States?

Mr. MADDEN. Yes; of the Department of Justice. The opinion is printed in part in the pamphlet.

Attention is especially directed to these phrases taken from the printed extract—"from the facts submitted" and "according to the facts stated."

At the trial of Lewis previously mentioned, the Assistant Attorney General who conducted the hearing June 16, 1905, testified that no complete stenographic report of the hearing had been made. He had caused some notes to be set down. The Attorney General must then have been acting upon such facts as were "submitted" and "stated" to him. It must be reasonable to assume that he could have had nothing before him other than "the facts submitted" in the inspector's report and "the facts stated" in the notes which the Assistant Attorney General had caused to be made.

So far as my own experience goes, and as I have been able to learn, the Postmaster General has never previously deemed it necessary to issue such a public statement explaining an official act. If the act were correct under the law and facts, its propriety is assumed. No explanation is called for beyond what appears in the fraud order itself. This pamphlet does not state that it was issued under authority of or in compliance with the requirements of any law. On the contrary, the following two acts of Congress seem specially to forbid it; that is, to forbid the spending of public money for such a purpose:

No head of any executive department or any bureau, branch, or office of the Government shall cause to be printed, nor shall the Public Printer print, any document or matter except that which is authorized by law and necessary to the public business; and executive officers, before transmitting their annual reports, shall carefully examine the same and all accompanying documents and exclude therefrom all matter, including engravings, maps, drawings, and illustrations, except such as they shall certify in their letters transmitting such reports are necessary and relate entirely to the transaction of the public business. (Act of Jan. 12, 1895.)

Hereafter no book or document not having to do with the ordinary business transactions of the executive departments shall be printed on the requisition of any executive department or unless the same shall have been expressly authorized by Congress. Act of Mar. 3, 1905.)

As the case appears from the record, the investigation by the inspectors in March, assuming it was lawful, furnished the basis for the formation of "charges" which the representatives of the bank were called upon to explain satisfactorily at the hearing June 16, 1905. The opinion of the Attorney General was based upon facts "submitted" and "stated." There is nothing to show that all the facts were submitted or stated; and there is nothing to show that the facts submitted and stated were not controvertible if the opportunity had been given at the hearing before the Assistant Attorney General June 16, or if the Attorney General had thought it worth while to give the bank representatives a hearing on the facts "submitted" or "stated" to him, and upon which he gave his opinion. In the civil proceeding the court held that the Postmaster General's "findings of fact" were not open to inquiry by the courts. In the criminal proceedings the facts submitted to the court, which in all reason must have been the same facts as were submitted to the

Attorney General, and upon which the Postmaster General acted, proved inadequate against the "overwhelming" evidence of good-faith. These circumstances speak for themselves. Comment would be superfluous.

The foregoing are facts in relation to the case of the bank. They are not submitted as evidence to show that the issuance of the fraud order was a wrongful act. I am not now concerned to show whether that action was in good faith in the discharge of a public duty. It is because the case of the bank is so interwoven with, so connected with, and so much a part of the official transactions in relation to the Lewis Publishing Co. that, to understand the latter, these statements concerning the former are necessary.

The scheme of the officials was one of "concerted action" and comprehended the closing up of the latter institution simultaneously with the closing of the bank. But in the case of the publishing company, their work and their actions must be taken, or purport to be taken, under different laws than those under which they proceeded against the bank. The scheme did not work out exactly as expected with regard to the publishing company, but it was worked out.

The words "concerted action" are the key to the conspiracy. I desire here to impress them upon the minds of the members of the committee.

The CHAIRMAN. It is now 5 minutes to 12, and there is a meeting of the House at 12. Shall we adjourn or proceed?

Mr. AUSTIN. I suggest we adjourn and come back at 2 o'clock.

The CHAIRMAN. The committee, then, will take a recess until 2 o'clock.

(Thereupon, at 11.55 a. m., the committee took a recess until 2 o'clock p. m.)

AFTER RECESS.

The committee resumed its session at 2 o'clock, pursuant to the taking of recess, Mr. Alexander in the chair.

STATEMENT OF MR. EDWIN MADDEN—Continued.

Mr. MADDEN. Just at the closing, Mr. Chairman, of the morning statement, in the statement as to the bank's case, I had called attention to two words, namely, "concerted action," and I stated that they were, in my opinion or judgment, the key to the situation. There may have been more than one key and, although I have finished on the bank matter, I ask permission to insert an exhibit here which, I think, contains two words which are very much of a key [exhibiting a painted tin sign]. I call attention to the words "without charge" on that sign, and I ask to place it as an exhibit in connection with the bank case and to explain that, while it is a sign used by the Peoples Savings Trust Co., it is the same as that used by the Peoples United States Bank, which was the subject of the fraud order. "Without charge" are the words to which I wish to call the attention of the committee.

Mr. McCoy. You had better read the whole thing.

Mr. MADDEN. May I read it as though it were the Peoples Bank sign? I tried to get one of the Peoples Bank signs similar to this, but could not do so; but I am sure that this is the same thing with the exception of the name of the bank.

Peoples United States Bank. Money orders without charge, payable anywhere in America, for sale here.

Mr. McCoy. You had better read it just as it is.

Mr. MADDEN. Very well, I will do so.

Peoples Savings Trust Company. Money orders without charge, payable anywhere in America, for sale here.

My information from the president of the Lewis Publishing Co. before I left was that the signs used by the Peoples United States Bank are the same as this, exactly, and that they were posted in many banks throughout the country.

Mr. McCoy. Let the stenographer note in the record that Mr. Madden is referring to an advertising sign which he produces.

Mr. MADDEN. Now I ask to be heard under the head of conspiracy. When I state that there was a conspiracy and that the wrongs of which I am complaining on behalf of the Lewis Publishing Co. were accomplished by means of it, I anticipate the first question to be what could be the motive for such a conspiracy? If that question be asked, I can state what seemed to be the motive. Whether it was the real motive, or whether there were other reasons associated with it, or whether standing alone it was the sole motive, I can not say positively.

The motive, whatever it was, for the conspiracy is a thing apart from the conspiracy itself. The evidence I shall submit here will, I believe, satisfy the members of this committee, or any court of law, or any open-minded person that there was a conspiracy, and that the wrongs complained of were made possible only by reason of it. Whether or not my conjecture as to the motive be correct, is not so material as the fact that there was a conspiracy and the things it accomplished.

Speaking now concerning the motive, the Peoples United States Bank was chartered by the State of Missouri in due form. It opened its doors for business in the latter part of the year 1904. In March, 1905, the bank had grown to be a \$2,500,000 institution.

Mr. AUSTIN. Do you mean by that that that was the capital stock or the deposits?

Mr. MADDEN. The capital stock. That is, it had 27,000 stockholders. They were scattered broadcast throughout the country.

The plan of the bank was novel in several respects, but principally in that of its checking system. It proposed to be depository for persons remote from ordinary banking facilities. Its deposits were to come in by mail.

By an arrangement with large banks in a number of the money centers of the country, the depositors in this bank would be able to check against their accounts from any point where they happened to be located, and have their checks honored by practically any bank in the United States without toll for exchange.

This proposition was vital to the express money order business. It would cut into it in proportion as this bank was patronized and as the idea grew and took hold with other banks. It was likewise a

serious matter to the banking interests. It would cut into the exchange revenue in proportion.

The president of the express companies was a Senator from New York.

Mr. AUSTIN. Do you mean Senator Platt? Just name him.

Mr. MADDEN. Yes.

Mr. AUSTIN. Because there are other Senators——

Mr. MADDEN. Senator Platt. The then Postmaster General was from New York.

Mr. AUSTIN. That is, Mr. Cortelyou.

Mr. MADDEN. Mr. Cortelyou. Whether the express companies or the banking interests had anything to do with his appointment I can not say.

Neither can I state that the Senator from New York, who would have to do with his confirmation and who was then specially influential with the administration, had anything to do with the case. I state the facts merely to show what might be in that combination of circumstances if the Postmaster General were the type of man needed to find a way for putting this bank to sleep in its infancy in the interest of the express companies or of the banking interests, or of both.

At any rate, before this Postmaster General had been in his seat 10 days his special representatives began work on this bank. A fraud order was issued against it, and it was closed up when he had been in office scarcely four months.

If the circumstances recited might have furnished a possible motive for the destruction of the bank, they would scarcely account for the action against the Lewis Publishing Co. In that connection we have these circumstances:

The publications had an enormous reading clientele. It included the stockholders of the bank. The president of the bank was a forceful and fearless writer. He could speak through the columns of the publications to the stockholders and to the world, and in no other way so effectively. It might have been important to those in the conspiracy that at the time the bank was to be destroyed that it were well to cut the publications off simultaneously. If that were done, the bank would find it hard to get its case before the public in other publications, because the publishers are fearful and shrink from an attack on a public official with power to retaliate. It takes courage, and lots of it, to charge a Cabinet officer with wrong, and it is a most difficult thing, due to his great power and many opportunities for hiding behind subordinate officials, discretion, alleged constructions of law, etc., to prove him to have done actual wrong.

Whether the foregoing circumstances furnish a motive for the action against the Lewis Publishing Co., must be more or less a speculation. It is the best I can do in the way of showing the motive.

At all events the officials proposed to have "concerted action" upon the bank and upon the Lewis Publishing Co. The Postmaster General's special representatives moved upon them simultaneously, and, as will hereafter be shown, concerted action was in the scheme from the very beginning.

But this is the case of the Lewis Publishing Co., complaining of the wrongs done to it. I shall now proceed to show what was done and how it was done.

The company charges that the conspiracy included the then Postmaster General, George B. Cortelyou; the then and now Assistant Attorney General for the Post Office Department, Russell P. Goodwin—

Mr. AUSTIN. What State is he from?

Mr. MADDEN. Illinois, I believe. The then post-office inspector in charge at St. Louis, Robert M. Fulton; the then postmaster of St. Louis, Frank Wyman; the then United States district attorney at St. Louis for the time being, and others. Those named were the important members. But for them and their individual official contributions to the wrongful and lawless acts the damages later to be explained and the injuries inflicted would not have been possible. They contributed materially and more or less as will be shown. But all were concerned in some degree.

Mr. AUSTIN. Will you please give the name of the attorney? We may want him as a witness in the case.

Mr. MADDEN. There were two. At one time D. P. Dyer, and the other was Henry W. Blodgett. Both were involved in this case. As I have said, all these were concerned in some degree. This committee will not be asked to take my unsupported statement as to these officials.

Mr. AUSTIN. You are sworn as to this statement?

Mr. MADDEN. Yes; I swear to the statement, that all of the facts are facts to the best of my knowledge and belief.

Now, under the head of the Lewis Publishing Co., I wish to make this statement. The Lewis Publishing Co. is incorporated under the laws of South Dakota. It is a \$3,000,000 institution. It is located in University City, St. Louis County, Mo. It moved out of St. Louis and began operations there in 1904. The company published two monthly periodical publications, known as the Woman's Magazine and the Woman's Farm Journal.

These magazines were for the "common people," so called. They were furnished to the public at a subscription price of 10 cents per year or 1 cent per copy. Apparently the price was small, but as a matter of fact it was not actually so, when compared with others in the number of pages, amount of reading matter, quality and weight of paper, etc. Their production was actually less expensive in proportion than many of the magazines sold at 10 cents per copy or \$1 per year and many of the newspapers issued daily and sold at a cent per copy or \$3 per year.

Lewis and those associated with him in the Lewis Publishing Co. were hustling, prosperous business men. They invested their capital and their energies in the development of that institution. Practically its products could be distributed only by mail. The company applied for and received in due course from the department the authority to mail the Woman's Magazine and Woman's Farm Journal as matter of the second class. That the publications met the requirements of the law for that classification must be assumed. Otherwise it would have been unlawful for the department to admit them to the mails under it. That classification had the sanction of time. For years both publications continued unquestioned to be mailed as matter of the second class.

In March, 1905, the income of the Lewis Publishing Co. from subscriptions to its two magazines and from advertising patronage was

close to \$850,000 per annum. The two magazines had approximately 2,000,000 circulation, the *Woman's Magazine* having nearly three-fourths of the reading clientele.

Printer's Ink, a New York publication devoted to publishers and advertisers, is admitted to be the highest class expert adviser of both in the United States. In the edition of the publication dated February 1, 1905, page 34, there was published for the benefit of publishers and advertisers the Rowell Advertising Agency list of the six best advertising mediums. In that list the *Woman's Magazine* was placed third. It stood next below the *Ladies' Home Journal* and next above the *Saturday Evening Post*.

It will be unnecessary to explain that this condition of confidence, an enormous reading clientele, large advertising patronage, and high standing was not the result of chance, but was due to merit and tremendous effort put forth by the company in the building up of a good name for itself and its publications throughout the country.

A magnificent printing plant had been erected by the company at University City at a cost of approximately \$400,000. The total cost of the plant with its machinery equipment, etc., was nearly one million.

May I inquire here if there have been delivered, as I expected, some photographic views of the plant and pictures of the interior and exterior?

The CHAIRMAN. Yes; they are here.

Mr. MADDEN. I will offer them as an exhibit later.

Mr. REDFIELD. From whom was that printing plant purchased—the printing machines?

Mr. MADDEN. I think the Goss Co. was one; in fact, I am sure the Goss Co. furnished the two largest, and one of them is the largest in the world, I believe.

Mr. REDFIELD. That throws an important light on the nature of your business, to know whom they were bought from.

Mr. MADDEN. One of them was from the Goss Co. I am sure. I did not come prepared to explain that, because I did not think it was important.

Now, under the head of Postal Laws and Regulations, I desire to make a few statements:

As a foundation for what is to follow and for the sake of clearness, it seems important here to say a word concerning the Postal Laws and Regulations. The members of this committee know, and it may be unnecessary to repeat, that it was Congress which created the Postal Establishment. Congress determined of what the mail service should consist, fixed the various classes of mail matter, and the rates of postage. It created the Postmaster Generalship and made him the head of the postal service, the supervisor and director; but it gave him no power outside of the statutes. The Postmaster Generalship has no inherent constitutional power.

Manifestly, the Postmaster General could personally attend to very little of the actual affairs of administration from day to day. Congress authorized him to prescribe regulations not inconsistent with law for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, etc. He has created a book called "The Postal Laws and Regulations." Roughly estimated, about 20 per cent of it is postal statutes and 80

per cent regulations. So far as those regulations are consistent with law they are the law. They are made for putting in effect the intent of Congress in enacting the statutes.

The Postmaster General may revise, change, or eliminate any regulation, or all the regulations, at will. But once the regulations are made and published for the guidance of the public and the postal service, they are the law, if not inconsistent with the law, until they are changed. They bind the Postmaster General himself, as they bind every subordinate and the public. He is not a free lance to do as he pleases, regardless of the law and regulations.

The Postal Laws and Regulations of 1902 were in effect during the time the matters complained of here took place. The following is section 14 in full. The first paragraph is the statute. It is necessary to clearness that I place this section and a few others in the record here:

SEC. 14. The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it. (R. S., sec. 161.)

2. All regulations or amendments thereof shall be promulgated by the Postmaster General and duly entered of record in the journal. No regulation shall be in any wise altered or varied except by amendment.

3. The regulations shall be published in the Postal Laws and Regulations, and all amendments or new regulations will be printed in the Annual and Monthly Postal Guides in such form that they can readily be cut out and pasted in their proper places in the current edition of Postal Laws and Regulations. All officers and employees of the Post Office Department and the postal service are required, as amendments or new regulations are issued, to correct in this manner the volumes furnished them.

Under the authority of Revised Statutes, section 161, the Postmaster General did, in the Postal Laws and Regulations of 1902, prescribe the duties which he reserved to himself and those which he placed upon and reserved to the four Assistant Postmasters General. The government of the entire establishment is comprehended in this distribution of its business.

Under section 16, the Postmaster General prescribed the duties of his own office in part as follows:

The superintendence and government of the department, * * *; the determination of appeals from the action of the several Assistant Postmasters General; the promulgation of rules and regulations; * * *.

Following this, in section 17, he prescribed the duties of the First Assistant, and in section 18 the duties of the Second Assistant.

In section 19, the duties of the Third Assistant are prescribed. One of those duties is "The general supervision of the collection and deposit of the revenues of the postal service and its financial operations; the keeping of accounts of postal receipts, and of payments from the Treasury into the several subtreasuries and depositories; the drawing of warrants for the paying of any indebtedness of the department and for the covering into the Treasury moneys derived from the service * * * the classification of mail matter," etc. This regulation makes the Third Assistant Postmaster General the revenue officer of the department.

Under that same section defining the duties, jurisdiction, and business of the bureau of the Third Assistant, the Postmaster Gen-

eral did, in section 8, prescribe the duties of the Division of Classification of Mail Matter in the following language:

8. The Division of Classification of Mail Matter, under the supervision of a chief of division, is charged with the consideration of all questions relating to the classification of matter admissible to the mails intended or deposited for mailing, including the determination of the admissibility of publications to the second class of mail matter and their right to continue therein; the use of penalty envelopes and the franking privilege; the supervision of the collection of postage; the examination of postmasters' statements of second-class postage collected, and keeping the necessary records connected therewith.

The duties and responsibilities fixed in the foregoing section are in the furtherance of and in particular of the general duty of the Third Assistant Postmaster General to supervise the "collection and deposit of the revenue of the postal service."

Beginning with section 410 and continuing to and including section 486, the regulations further define the various classes of mail matter, the rates of postage to be paid thereon, and are a notification to the postmasters of the country, postal employees, and the public generally that the Third Assistant Postmaster General is the officer in charge and that all correspondence in relation to such matters should be addressed to him. He instructs all postmasters and the public in relation thereto and determines in the first instance for the department all question in dispute, subject only to appeal to the Postmaster General as he provided in section 16.

In section 20 the Postmaster General fixed the duties of the Fourth Assistant Postmaster General, to whose bureau was then attached the Division of Post Office Inspectors. In paragraph 6 of that section he defined and prescribed the duties of that division under the chief post-office inspector. Generally speaking, those duties constituted the making of all necessary investigations, inquiries, etc., and reporting thereon for the benefit of the Postmaster General and the four Assistant Postmasters General in regard to their respective functions as defined by the regulations. Under section 44 he made post-office inspectors "the special representatives of the Postmaster General" in the following language:

SEC. 44. Post-office inspectors are the special representatives of the Postmaster General. They are charged with the investigation of post offices and all matters connected with the postal service, and with keeping the department advised as to the condition and needs of the service. Alleged violations of law are to be investigated and reported upon by them, and they will, when necessary, aid in the prosecution of all criminal offenses.

In the early part of the year 1905 and prior to Mr. Cortelyou's becoming Postmaster General, the Division of Post Office Inspectors was transferred to the office of the Postmaster General by special order duly published. There was no other change in the regulations or in regard to the duties of the Division of Post Office Inspectors. It was simply a question of head.

The CHAIRMAN. I did not understand under whose control they were before.

Mr. MADDEN. The Fourth Assistant.

Mr. ATSTIN. They were transferred prior to Mr. Cortelyou's coming in?

Mr. MADDEN. Yes: they were under the Postmaster General when he came in.

In section 21 the duties of Assistant Attorney General for the Post Office Department are prescribed. Generally speaking, those duties were to advise the Postmaster General and the four Assistant Postmasters General on all questions arising under the law or regulations, and "with the preparation and submission (with advice) to the Postmaster General of all appeals to him from the heads of the offices of the department depending upon questions of law."

An understanding of the foregoing regulations and the functions prescribed for the Postmaster General's office by himself and those prescribed for the offices of his four assistants, and the legal advisor of all, is important as later will be shown.

Shortly after the publication of the Postal Laws and Regulations of 1902 Congress authorized for the Division of Classification, Bureau of the Third Assistant Postmaster General, a corps of "special agents." These officers were to be trained specially with regard to the law and practices in that division in order to render proper assistance to the Third Assistant Postmaster General.

This was due to the dissatisfaction of the Third Assistant Postmaster General with the field methods of post-office inspectors. They lacked restraint and assumed such authority and powers as they pleased, regardless of law. When a matter was referred to them they seemed to take it as a duty to "make a case," if possible, against the party or publisher or institution investigated. Their reports, instead of giving an unbiased statement of facts, were largely made up of "opinions" so called, and "judgments" so called, upon private affairs and private conduct, and an evil conclusion was the rule. Their reports could not be shown to publishers or others cited to the department to be heard on matters reported upon therein. Neither could their reports be taken into court to be used as evidence or otherwise. Generally, their reports were valueless, because not furnishing the essentials for proper administration of the law. An illustration of the excesses complained of will be found in the following quotation from the *Globe-Democrat* of St. Louis, September 17, 1907. It so happens that an inspector mentioned is one of those involved in this case.

Mr. AUSTIN. Can you not give us his name?

Mr. MADDEN. Robert M. Fulton. His name is mentioned here:

United States post-office inspectors, assisted by St. Louis detectives, raided four Chinese companies yesterday after an investigation disclosing the existence of the headquarters of an alleged lottery in St. Louis, with correspondents in every part of the world. Twenty-seven Celestials were caught by the dragnet, four of whom are held under \$500 bond, each charged with using the mails to further a lottery scheme. Evidence was secured which the post-office inspectors consider strong. The stores or companies raided are at 722 Market Street, and 14, 16, and 25 South Eighth Street.

Letters were secured which prove that St. Louis Chinamen maintained a lottery whose correspondents live in nearly every quarter of the globe. Letters from Mexico, Cuba, China, Canada, and South America were confiscated. Gambling and lottery paraphernalia of every description were also taken in the raid. Three patrol-wagon loads of the prisoners were taken to the Federal Building, where they were given a preliminary examination before Post-Office Inspector Fulton.

It was the Third Assistant's distrust of post-office inspectors and his being without power to regulate their conduct to meet the requirements of his office that caused him to appeal for inspectors of his own, who would work under his instructions and report directly

to him. Congress responded as stated and he abandoned the use of post-office inspectors.

Later, the Third Assistant made a like appeal to Congress—

Mr. AUSTIN. Who was Third Assistant at that time?

Mr. MADDEN. I was, sir.

Mr. AUSTIN. You did not tell us what became of that raid on the Chinamen.

Mr. MADDEN. That is the last I heard of it. I simply recite the facts as they appeared in the paper, and to my mind they are astounding.

Mr. AUSTIN. You simply read an extract that they had raided them.

Mr. MADDEN. I do not vouch for the truth of that; I vouch for the truth of the fact that this is an extract from this paper.

Mr. REDFIELD. Is my memory correct, that in that raid they were accompanied by members of the St. Louis police force?

Mr. MADDEN. According to the statement, they were assisted by detectives of the St. Louis police force, and then when they got the Chinamen down to the Federal Building Mr. Fulton sat as a judge and heard the case. That is inspecting post offices with a vengeance. I don't think that is properly a part of their duties.

Mr. REDFIELD. The regulations as to their duties are clear?

Mr. MADDEN. Yes. I do not know of any regulation that authorizes raiding any private place or going into a man's house.

Mr. AUSTIN. Where it is suspected that a lottery is being conducted, have they not a right to go in and find out—

Mr. MADDEN. In such cases, I think it is the duty of the Post Office Department to turn the case over to the Department of Justice; but that a post-office inspector should leave the post office and go out and raid private establishments and make arrests is something I do not believe they have authority to do, and I do say that if they have such authority the people ought to know it; it ought to be written in the law.

The CHAIRMAN. We have a case of the Perkins detective agency in which post-office inspectors, aided by the Burns detective agency, made a raid on the office of the Perkins detective agency at Indianapolis and rifled their office. At least that is the allegation.

Mr. REDFIELD. Do you understand that Congress has any power to give the right to enter private property?

Mr. MADDEN. I will answer that question if I may be permitted. No; they have not.

Mr. REDFIELD. It seems to me that a post-office inspector has no more right to enter my house on the ground that crime may be committed there than a burglar, and it seems to me I have a right to exclude him by force, and that Congress has no power under the Constitution to give him such a right.

Mr. MADDEN. That is correct, I think.

Mr. BRITT. May I say that, as I understand it, these entries are made by permission or, in the absence of permission, under authority of a search warrant, and that they are authorized; that they swear out warrants for an arrest whenever the facts warrant it; and that the arrests are made in the bulk of the cases by the United States marshal or his deputies and not by the post office inspectors, but that the persons charged are held by the inspectors only in cases

of great stress or emergency, and in such cases only? That is my understanding of the practice.

Mr. REDFIELD. Can you place before the committee the law under which, even in cases of emergency, they are held?

The CHAIRMAN. I would suggest that perhaps we had better not digress at this time.

Mr. REDFIELD. Yes; that is probably better.

Mr. MADDEN. May I proceed?

The CHAIRMAN. Yes.

Mr. MADDEN. Later, the Third Assistant made a like appeal to Congress for a special assistant attorney to be attached to his office to advise in connection with the law of second-class mail matter. Congress approved again, and the Third Assistant selected and the Attorney General appointed a special assistant attorney for that purpose. This attorney performed his duties in the office of the Third Assistant Postmaster General.

The "special agents" and this "special assistant attorney" relieved the Third Assistant from calling upon the post-office inspectors to make inquiries and secure information necessary to the administration of the law of second-class mail matter in post offices or otherwise; and from calling upon the Assistant Attorney General for the Post Office Department for advice concerning the law of second-class mail matter.

Now, gentlemen, I ask your permission to digress here a little to make an explanation that I deem necessary for a correct understanding of this case; I wish to speak under the head of abuses in the second class of mail matter.

A necessary part of the foundation for presentation of this case is a brief statement concerning the abuses, so called, in the second class of mail matter. The relation will appear in the circumstance that an administrative reform of the abuses was in progress and that reform was used as a cloak for the wrongful conduct of the officials.

I was appointed Third Assistant Postmaster General on July 1, 1899, by President McKinley. I had something over seven years' experience in a local post office.

Mr. AUSTIN. What was the name of the post office?

Mr. MADDEN. Detroit, Mich. There part of my duties as superintendent were to look after and report upon the mailings of second-class matter, to make inspections to see that no matter of a higher class was inclosed, and that the publications otherwise described in the law for second-class rating—in other words, to apply the law and regulations locally. I had taken special interest in this subject, and made a study of it. During this time the annual reports of the department, and especially those of the Postmaster General, were dealing with so-called abuses in that class. The department was complaining that publishers were imposing upon the service and mailing as matter of that class many publications not deserving that classification and those rates.

These annual reports enumerated and explained the abuses. They were appealing for legislation to correct them. The annual report of the Postmaster General subsequent to the time I was appointed Third Assistant complained that a very large per cent, probably 50 per cent, of all the matter mailed as second-class matter was not lawfully entitled to that rating.

Immediately after my appointment I took up the study of the subject from a departmental standpoint, and subsequently had a number of conferences with the Postmaster General.

Mr. AUSTIN. Who was he?

Mr. MADDEN. Mr. Charles Emory Smith. I told him that whatever abuses were in the second class they were there by reason of the department's own acts, its own sanction.

Each individual publication admitted to that class was specifically passed upon by the department and admitted. It was the right of any citizen to apply for entry of his publication. It was the duty of the department to admit or deny the entry, according as it found compliance or noncompliance with the standards of the law. The administration of this subject has been for many years a duty of the Third Assistant Postmaster General.

The attempts to secure legislation failed. Many Members of Congress privately said they considered existing law ample to get rid of most of the abuses complained of, and with that I agreed.

After mature consideration and mapping out a plan of procedure I proposed to the Postmaster General that an administrative reform of the abuses be undertaken. This was favored. President McKinley and his Cabinet approved. Thereupon I drew and the Postmaster General signed three amendments to the Postal Laws and Regulations. They were known as the reform regulations. They amounted to a revised interpretation of the law of second-class mail matter. They were published for the benefit of the postal service and the publishing industry on July 17, 1901. It was provided that they should not take effect until the 1st of the following October. This was to give publishers due notice of how the law would be administered after that date, and give those who could the opportunity to work out compliance.

Let it be understood that an administrative reform of this kind has two phases; first, there is the refusal to admit to the second-class publications of the types or characters inhibited by the new regulations; and second, the publications of those types or characters already in the second class must be excluded. Manifestly, any other course would be outrageous. The department has no power to charge different rates upon matter of the same character. It would not do to have some portion going at the second-class rate of a cent a pound, and another portion at the third-class rate of 8 cents a pound, the difference in rate depending not upon a difference in the character of the matter or change of law, but merely upon whether the act of classification occurred before or after the date when the new regulation took effect. The mail service must be open to all upon equal terms and conditions. Otherwise the department would be conferring a monopoly upon those fortunate enough to come into existence and get into the second-class before the new regulation took effect, for the third-class rate would be prohibitive of competition. Just about the beginning of this administrative reform Congress enacted the following statute:

When any publication has been accorded second-class mail privileges, the same shall not be suspended or annulled until a hearing shall have been granted to the parties interested. (Act of Mar. 3, 1901.)

Under the regulations the local postmaster determines in the first instance what is first-class, what is third-class, and what is fourth-

class matter, and charges the rate perscribed by law for those classes. It is different with second-class matter.

Mr. AUSTIN. You say that he determines it. Is not the publication submitted to the department and does not the department pass upon it in the first instance?

Mr. MADDEN. You misunderstood me. I say that under the regulations the postmaster determines in the first instance what is first-class, what is third-class, and what is fourth-class matter and charges the rates perscribed by law for those classes and that it is different with second-class matter. It is the department at Washington, the Third Assistant Postmaster General, who determines in the first instance what is second-class matter. The local postmaster may receive an application for the entry of a publication to the second class. The application, accompanied with a copy of the publication, is sent to the Third Assistant. In the meantime the applicant is required, if he desires to mail the publication before a decision be rendered, to deposit in trust with the local postmaster as a protection to the revenue an amount of money sufficient to cover the third-class rate should the Third Assistant decide the publication not to be of the second class. The publisher, under the regulations quoted, has the right of appeal to the Postmaster General from an adverse decision by the Third Assistant. A person mailing first-class, third-class, or fourth-class matter, and in dispute with the postmaster as to the class or rate of postage to be charged, may appeal to the Third Assistant. After that an appeal lies again to the Postmaster General.

Under the statute last quoted and the conditions recited it is manifest that no blanket order could be issued to postmasters to exclude from the second class and charge the third-class rate upon publications which in their judgments were prohibited by the new regulations. Each individual case must be tried and decided upon its own merits and by the Third Assistant Postmaster General.

After some successes in my own work I was importuned by my superiors, by my subordinates, and by many publishers, who would have me hit hard and fast, under the cover of the public approval gained, and beat down what they regarded as abuses. It is surprising how many publishers will regard the publication of a competing institution an abuse, how superior officers will regard the publication which has criticized them or their work an abuse, and how subordinates will try to curry favor by appealing to the human weakness of the superior whose vanity or egotism has been enlarged by a success. It is not easy to preserve an even keel under such circumstances.

Mr. AUSTIN. Can you name a case where the departmental officials passing upon this question were influenced by their feelings, as you stated?

Mr. MADDEN. I can not name at this time any particular official that it was my experience to notice that very often the conduct of the official was such that would indicate that his mind was influenced.

Mr. AUSTIN. You had to pass upon it?

Mr. MADDEN. Yes. I have had publishers walk in and throw down a publication and wonder how it was permitted to go as second class. To their minds it was totally outside of such class.

I resisted the pushing and the persuasion to move headlong without compass or balance. I sought to keep squarely within the four

corners of the statute and to have the morals as well as the law fairly on my side. The department had been lax in its administration of that law. That was no fault of the publishers. Many things had been classified as of the second class which had no legal right to that classification, but it was not by fraud. It was the department's own wrong of positive sanction or sufferance. Publishers were bound to assume that the law had been properly administered, and on the faith of it had spent their capital and energies in establishing their enterprises. Even if their publications were in that class by doubtful right, they were not to be regarded as criminals or wrongdoers. Now, after many years, with the law standing as it had stood from the first, no change in the publications, but a mere change of regulation, which might or might not, under judicial review, prove to be "consistent with law," those enterprises could not be ruthlessly struck down by suddenly changing the classification and assessing a prohibitive rate upon their products.

The difficulty and delicacy of the reform work you will appreciate. Congress appreciated it and fortified me with a corps of my own inspectors (special agents) and my own special attorney. Now, the Third Assistant's office, which had administered this law for so many years, proposed to move forward within the lines of the law.

The foregoing explanations are necessary as a prelude. With an understanding of those situations, this committee will be better able to appreciate the maneuvers of my superior to make my work the cloak for the wrongs he and his coconspirators proposed to inflict with my hand and over my name.

MR. AUSTIN. Who is that you have reference to?

MR. MADDEN. Postmaster General Cortelyou. We are now up to the maneuverings of the conspiracy, how it operated, and what it accomplished.

I have called attention in what has gone before to the purpose of the postal authorities to move against the Peoples United States Bank and the Lewis Publishing Co. simultaneously, using their own language, "by concerted action," and that operations were begun within 10 days after Mr. Cortelyou became Postmaster General.

MR. AUSTIN. When did Mr. Cortelyou come in as Postmaster General?

MR. MADDEN. March 4, 1905.

The report upon the business of the Lewis Publishing Co. bears exactly the same date, May 17, 1905, as the report on the bank. Both reached the department May 19, 1905. This investigation, so called, was later termed in the department's literature "an exhaustive inquiry into the publication methods of the Lewis Publishing Co." Ostensibly this inquiry was for the purpose of determining whether the Lewis Publishing Co. was entitled to continue to mail the Woman's Magazine and the Woman's Farm Journal as matter of the second class.

It is true that the company erred in not demanding, before submission, to know by authority of what law the inspectors assumed to investigate its books and papers, and for what purpose. No statute capable of being construed to grant such authority or to authorize such a proceeding for any postal purpose could have been produced. The plan would, therefore, have failed at that point.

But when the United States knocks at a citizen's door and calls upon him to disclose his private affairs he is awed and intimidated by the show of authority. He responds without question, assuming that the call is in good faith and in obedience to the requirement of some law, else it would not be made.

Mr. AUSTIN. Why did not Mr. Lewis stop these people?

Mr. MADDEN. Because he did not understand the proceeding. He might have done so. I don't know why he did not; but he did not. He allowed them to come in and ransack his books. The citizen knows that the mission of his Government is to protect, not to destroy; that the Constitution guarantees him against unreasonable searches, so he trusts. It is hard for a man to believe that his Government would wrong him by mistake, much less by intent, for the theory is that it were better that 20 guilty should escape than 1 innocent should suffer.

Mr. AUSTIN. Did they have a search warrant?

Mr. MADDEN. No, sir. There was nothing that I ever heard of or can find out.

The proper mission of a post-office inspector is to perform the functions of the eye, the ear, and the arm, not the brain, of the postal establishment at Washington. He should gather all of the facts essential to the proper administration of any postal law and report them impartially. He should make no argument, make no recommendation, give no opinion, render no judgment. It is the mission of the officer in the department to decide, after a consideration of all the essential facts, for and against, what action under the law should be taken.

Mr. MCCOY. Do I understand you to say that it is not the duty of post-office inspectors to give opinions?

Mr. MADDEN. I say it would not be; I say, if you will read their reports they are nothing but judgments and recommendations and opinions, and they always find facts to justify their recommendations. They do not get the facts and state them impartially.

Mr. BRITT. May I interrupt you there?

Mr. MADDEN. Yes.

Mr. BRITT. I understand you to express the view that it was wrong for the post-office inspectors to make an examination into the private business of publishers with a view of ascertaining the state of affairs there; am I correct?

Mr. MADDEN. Yes.

Mr. BRITT. Well, if that is wrong, would it not be equally wrong for officials under another name or style to do the same thing?

Mr. MADDEN. Yes; they have no business there at all.

Mr. BRITT. Let me ask you, then, if you did not, as Third Assistant Postmaster General, send officials over whom you had control to make an even more extended and general examination into the affairs of this company, and if they did not make such examination, extending over a greater period of time, with a larger number of officials inquiring fully into every aspect of the publisher's business, and if they did not submit thereon to you a report of their findings?

Mr. MADDEN. Yes; and that was on the express order of Postmaster General Cortelyou.

Mr. BRITT. Did you not sign such an order?

Mr. MADDEN. I sent them in obedience to his command. You will understand that very accurately after I get along a little further. I will state a little more——

Mr. AUSTIN. If you were conducting a legitimate business and not in violation of law, would you object to an examination of your business?

Mr. MADDEN. No; not if it was done in good faith and not done to break my credit. You know what it means to have a hundred inspectors start an investigation and publish the fact in the press? Have you any idea that a man can maintain credit under such circumstances?

Mr. REDFIELD. Did you interpret the question of Mr. Austin to mean that if you were conducting a perfectly legitimate business you would think it proper for a United States inspector to demand in any way the right to examine your records?

Mr. MADDEN. No, sir; I did not mean to be understood that way.

Mr. AUSTIN. I did not put the question that way at all. I said if his methods were questioned would he have any objection if he was running a legitimate concern, not in violation of law, to officers coming in and investigating.

The CHAIRMAN. That leads to a very serious question. If a man has a wholesale dry goods business do you think that the people of the country would ever consent that a Government agent could go in there and look over his books and business? That involves the question of personal right. I would say that a man would have a right to resist any such intrusion as that.

Mr. AUSTIN. I am not saying anything about the right of anybody to do it. I am asking whether he would object to having his business looked over if he was conducting a legitimate business.

Mr. REDFIELD. I would not object to an investigation in such a case, but I would object very seriously to anybody asserting the right to make such an investigation.

Mr. MADDEN. Gentlemen, if you will permit me to make a statement here to clear this up a little. I will say that I believe the business of the Postmaster General and the Assistant Postmasters General and inspectors is in the post office; that it is their business to classify the mails, and when the law says a publication must comply with so and so in order to get into a certain classification, that he can demand that the publishers shall comply; but that does not authorize him to go into a private establishment and ransack a man's safe and take his private papers and books away from him.

Mr. BRITT. May I interrupt you?

Mr. MADDEN. I will be glad to be interrupted.

Mr. BRITT. Suppose you are, as you have been for a great many years, charged with a duty of administering a statute, and you desire to administer that statute under your oath and under your duty with fidelity and with fairness, but you are utterly lacking in the necessary facts for your proper guidance in the premises, and the law had provided for you an inquiring officer whose duty it should be to find those facts for you and to supply them to you for your honest guidance; do you not think that under our system of government, and under the usual procedure in the ascertainment of facts for the guidance of public officials, that you would be justified in

sending such officials to inquire into these banks for you? Do you think the law itself would be improper?

Mr. MADDEN. I would say that if there were a legitimate reason to question the right of any publication passing through the mails at any rate, especially the second-class rate, that you, as Third Assistant Postmaster General, charged with the duty of administering the law, would have a perfect right to cite the publisher to show cause under that act why his publication should not be put out, and that prior to that you have no right to go into his establishment and ransack his papers and books and make a case against him before he knows your purpose.

Mr. BRITT. But suppose you have in your mind an idea that there are other facts not disclosed by the publisher in this hearing that are pertinent to the inquiry on which the case may turn one way or the other in its rightful determination; do you not think in analogy to the determination of matters in dispute between man and man generally that the Post Office Department, or any other department of the Government, ought to have the right to send the proper official in the proper way—

Mr. MADDEN. Yes; in the proper way—

Mr. BRITT. That is, to make an inquiry. You are assuming in every instance, as I understand it, that in all cases the officer transcends his authority. If so, he should be held accountable. But suppose he does it within his authority, in a proper way, do you think that it is then a violation of law?

Mr. MADDEN. Your question is so long that it is difficult to answer it, but I would like to endeavor to answer it—

The CHAIRMAN. What do you mean by the discharge of the duty in a proper manner? Would that preclude the act of the post-office inspector going into the private place of business of a party and opening his safe and taking his papers, and so forth?

Mr. MADDEN. No, sir; it would not.

The CHAIRMAN. I am asking Mr. Britt, now.

Mr. MADDEN. I beg your pardon.

The CHAIRMAN. In other words, what does the fourth article of the Constitution of the United States mean?—

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Now, in any event, they would have no right to make a seizure or search without warrant, would they?

Mr. BRITT. I recognize the authority of the provision of the Constitution which the chairman has read, and believe that the inquiring officer is without any authority whatever, under any official commission which he might have or which could be given him, to make any forceful entry into or invasion of any of the rights of the owner; but my point was directed to this end, that if the inquiring officer was within his authority and his inquiries were proper and they were made in the proper manner, without transcending his authority or any invasion of the rights of others, that the denial to an inquiry made under such circumstances and in that way would be against the public interests and against the welfare of the people generally,

and that it would shut off an important avenue to the gaining of facts necessary to the settlement of public questions.

The CHAIRMAN. My inquiry is this: I don't care how desirable the purpose or inquiry may be. This is in the interest of the citizens and all important that it should be observed, and however desirable it may be to go into a man's safe and get what you have reasonable grounds to suspect would be evidence against him in any inquiry you are prosecuting, you have no right to do it forcibly or otherwise without his consent and pursuant to law.

Mr. BRITT. I agree with that fully.

The CHAIRMAN. And in that way post-office inspectors have been violating law, as I am informed.

Mr. BRITT. If that is so, of course I do not approve of it.

Mr. AUSTIN. You say, giving his consent. Suppose a man had violated the law. He would never give his consent then to any examination.

The CHAIRMAN. It does not make any difference about that. It is to protect the citizen.

Mr. AUSTIN. However desirable it might be for the State to get the proof?

The CHAIRMAN. The prosecuting attorney has no right to break into your office and open your safe, and if he does so he is a trespasser, and you have a right to resist it and even to the extent of shooting him down.

Mr. AUSTIN. Suppose your safe contained evidence of the fact that you had violated the law. Do you mean to say that he would have no right to secure such evidence?

The CHAIRMAN. He would not without a search warrant, and if he does so he is a trespasser, and you have a right to defend your premises against him.

Mr. BRITT. My suggestion was upon the assumption that the inquiry was always proper and lawful.

The CHAIRMAN. I wanted you to make that clear.

Mr. MCCOY. Is not your question, then, Is it proper to make a proper inquiry?

Mr. BRITT. Exactly so. Mr. Madden's statement, as I understood it, was a complete and absolute denial of the right of inquiry at all.

Mr. REDFIELD. Oh, no.

Mr. BRITT. My position is that the inquiry may be made if it is made in a lawful way.

Mr. MADDEN. May I state my position? The law provides that when a publication complies with certain requirements it is admitted to the second class of mail matter. Another statute provides that when once admitted that admission shall not be suspended or annulled without a hearing. Another statute says that if any publisher shall secure second-class rates by false evidence he shall be punished accordingly. Now, there is the protection of the department, and after it has admitted a publication, if it discovers that false evidence has been given, it can proceed against the publisher under that statute by proper procedure. Furthermore, every time the Post Office Department doubts that the publisher is complying with the law it can cite that publisher to a hearing, and if it appears to the officer sitting in judgment at that hearing that there were other

facts not brought out, then that publisher may be cited again to appear, but the post office never has the privilege, in my judgment, to go into the private establishment of anybody and lock up the doors so that the publisher can not go to his own records and can not seal the doors of any private establishment with an official seal.

Mr. McCoy. Was that done in this case?

Mr. MADDEN. It was done in this case for days. They could not get at their own books and papers, and the employees coming there in the morning could not get in until the inspector showed up and broke the seals.

Mr. BRITT. I would like to get your position clearly——

Mr. MADDEN. Well, that is it——

Mr. BRITT. Do I understand that you entertain the view that the only source of information which the department could have would be the ex parte testimony of the publisher, without any further inquiry on the part of the Government?

Mr. MADDEN. You are privileged to call for proof that would make it satisfactory to you.

Mr. BRITT. From whom?

Mr. MADDEN. From the publisher.

Mr. BRITT. But the publisher is an interested party, and he will not give the proof, perhaps. You can not depend upon him to develop your side of the case, can you?

Mr. MADDEN. No——

Mr. BRITT. Then, what further right of inquiry have you if you deny the right to the post-office inspector to go into the establishment in question and secure the proof?

Mr. MADDEN. You have a right to demand the proof of the facts from the publisher.

Mr. BRITT. And suppose he refuses to give them?

Mr. MADDEN. Then your remedy is to rule the publication out.

Mr. BRITT. And you do not think you should use the inspectors for that at all?

Mr. MADDEN. No; I think the post-office inspectors have got to be checked. Otherwise, as the chairman of the committee has said, they will be shot down yet, because they are carrying things with a pretty high hand. Every day now they are rifling papers and private establishments.

Mr. BRITT. I maintain that I may employ an officer in a proper manner, to conduct an inquiry in a proper way, and I have not at any time suggested that I have a right to employ him in an improper way; but I do maintain I have a right to use him in a lawful way, and for a rightful purpose.

Mr. McCoy. What is a lawful way to get information as to whether or not a publication is entitled to second-class rates; what do you consider a lawful way to get information from a reluctant publisher?

Mr. BRITT. I will endeavor to give you the method which is used in the procedure of the department.

Mr. TOWNER. I think we had better go through with this statement.

The CHAIRMAN. Yes; perhaps that would be better.

Mr. McCoy. I was not asking for a statement of fact, but only his opinion; but if the committee wants to put that off until later, very well.

Mr. MADDEN. If I may make one more statement to clear up the atmosphere about this, I administered the law on this for a number of years. I kept within the law. That is why I objected to the inspectors—because they could not be kept within the law. As soon as I, as Third Assistant Postmaster General, felt that the publisher was not complying with the law in his publication he was cited to show that he was complying with the law; he had a right to show that he did comply with the law; and when the publisher had gotten second-class rates, or after getting them was doing something which he was not entitled to do, it was my right to demand that he show his right to continue to do those things. I never came out of the Post Office Department. I could demand the proof there in the Post Office. But I never had a right to ransack his private papers, and I did not do it. Whenever I have gone into the office of any publisher or other person it has been because it suited the convenience of the publisher to have the hearing there rather than submit his proof in the Post Office Department. I never claimed a right to go into anybody's private office and demand his papers, and so on, without his consent.

But it has come to pass in the rapid development of our secret service that in the philosophy of a post-office inspector, bent upon "making a case" to suit his chief, nothing is of importance, save that which tends to the desired result, and statutes must yield to the necessities of the situation. The public makes no fine distinctions. But it will be easy for this committee to understand and appreciate the difference between the work of one post-office inspector who goes out from the department to ascertain and report impartially upon all the facts, pro and con, which are necessary to determine the correct action of the department in any case; and that of another who goes out to "make a case" and as a prosecutor is bent upon ascertaining only the kind of facts which he believes will sustain or furnish some basis for the action which he conceives to be already determined upon or desired to be taken by the department.

Well, this report on that "exhaustive inquiry" was sent from the Postmaster General's office to the Third Assistant for action. Along with it was sent a copy of the report upon the bank as if to make assurance doubly sure. The report on the bank, with a copy of the report on the publishing company, had been sent to the Assistant Attorney General for the Post Office Department to be considered by him as the basis for "recommending" that a fraud order be issued. If that were done, it must be over the Postmaster General's signature. That power may not be delegated to another officer. Under the postal regulations, which have been quoted, and the practice hitherto without exception, whatever action was to be taken on the magazines must be by the Third Assistant's office and over his name and title.

The proceeding in this case was strikingly irregular. For the previous many years, the Third Assistant had directed all movements against publications in the second class. If some citizen or publisher or postmaster reported, or if it came to the knowledge of the department in any way, that a publication was violating the law, the Third Assistant directed the course which should be followed to ascertain the facts, and then acted as the circumstances warranted. Such investigations as were proper to be made were, for some years

back, conducted by the "special agents" of the classification division of the Third Assistant's bureau. This was the first exception in history to the orderly course of procedure.

Under the regulations the Postmaster General had shorn himself of power to proceed as he did. That the regulations were consistent with law had never been questioned. If the Third Assistant or the conduct of his bureau failed to meet the approval of the Postmaster General, under his powers to generally superintend the postal establishment, three remedies were open to him: First, he might, on appeal in any case, reverse the Third Assistant's decision; second, if the conduct of that officer were in his judgment improper, he might cause his suspension or removal; and third, he might have changed the regulations and placed the jurisdiction elsewhere or taken it to himself. But as the regulations stood, the manner of the Postmaster General's proceeding was unlawful.

I ask the committee to be allowed to read here a report of the inspectors on "The exhaustive inquiry into the publication methods of the Lewis Publishing Co." A brief explanation is here necessary in order to understand how these reports were made. There is at St. Louis what is called a post-office inspector in charge, who is the head of the service there and who is assisted by several other inspectors, and presumably he sends them out when he does not accompany them himself to make investigation and report, and he reads their report and then sends it to the department. That accounts for the form of this. W. T. Sullivan and J. L. Stice were the post-office inspectors who conducted this investigation in the beginning, and they reported to R. M. Fulton, inspector in charge at St. Louis.

ST. LOUIS, May 17, 1905.

R. M. FULTON, ESQ.,

Inspector in Charge, St. Louis, Mo.

SIR: We have the honor to return case 52856-C, relative to the abuse of the second-class privilege of mailing the Woman's Magazine and the Woman's Farm Journal at the pound rate by the Lewis Publishing Co., at St. Louis, Mo., and beg leave to submit the following report of our investigation at St. Louis, Mo., beginning February 1, 1905, and continuing at irregular intervals up to the present time in connection with other cases bearing on the various enterprises in which E. G. Lewis is interested.

You will understand that all the enterprises that E. G. Lewis was interested in were under investigation.

The Lewis Publishing Co. was incorporated April 27, 1903, for the purpose of publishing and circulating the Woman's Magazine and the Woman's Farm Journal. The officers are E. G. Lewis, president; H. L. Kramer, first vice president; M. G. Lewis, second vice president; F. J. Cabot, secretary. The capital stock is \$1,200,000. Of this capitalization, \$1,000,000 is common and \$200,000 preferred stock. The preferred stock is held by 76 persons in sums of from \$1,000 to \$10,000. (Exhibit A.) These persons were the original subscribers and incorporators outside of Mr. Lewis and the officers. Of the common stock, E. G. Lewis holds \$750,000; the balance of \$250,000 being held by H. L. Kramer, F. J. Cabot, and M. G. Lewis, the latter being the wife of E. G. Lewis.

I ask any member of this committee what all these matters had to do with the classification of the magazines in the mail. Would that make any difference about what rate should be charged on the out-

going mail matter, whether Mr. Lewis had a million dollars of stock or half a million of stock? It shows the extent to which they went into this case.

The value of the franchise is fixed at \$1,000,000 for the Woman's Magazine and \$250,000 for the Woman's Farm Journal. The franchise consists of the privilege of mailing the two publications at the pound rate, the subscription lists, the advertising patronage, and general good will. It is a purely theoretical asset.

The Woman's Magazine claims a paid-up subscription list of \$1,200,000 and the Woman's Farm Journal \$500,000. Both publications are issued monthly and the rate is 10 cents per annum for each magazine. The Lewis Publishing Co. is located at Winner Station, St. Louis, Mo., just outside the city limits, in St. Louis County. It owns the Woman's Magazine Building and printing plant there, private cars, etc., on which Mr. Lewis places a total valuation of \$2,201,326.45, against which he states there are liabilities amounting to \$1,793,592.71, leaving a surplus of \$407,733.74. On March 14, 1905, we visited Mr. Lewis at his office, and at our request he furnished us with a financial statement of the Lewis Publishing Co. at the close of business on that day, a copy of which follows:

ASSETS.

Woman's Magazine (franchise)-----	\$1,000,000.00
Woman's Farm Journal-----	250,000.00
Cash-----	16,797.50
Accounts receivable-----	222,477.26
Bills receivable-----	3,270.87
Stocks and bonds-----	1,000.00
Building-----	405,328.20
Machinery-----	191,937.25
Furniture and fixtures-----	28,159.19
Real estate-----	52,167.00
Branch post-office equipment-----	1,258.00
Railroad trackage-----	6,035.16
Street car rolling stock-----	12,301.08
Composing room-----	1,903.38
Improvement account-----	8,693.56
Total-----	2,201,326.45

LIABILITIES.

Capital stock-----	\$1,200,000.00
Due banks on the loans-----	115,000.00
Notes payable for supplies-----	97,000.00
Special loans, construction account, 3 years, 6 per cent-----	381,592.71
	1,793,592.71
By balance, surplus-----	407,733.74
	2,201,326.45

Mr. REDFIELD. Is there anything known to you in the law that authorizes the post office, through any of its officers, to call upon any company for a statement of its financial condition?

Mr. TOWNER. In my judgment, unquestionably they have that power, but let us not take any time with the discussion now.

Mr. MADDEN. May I ask you, for the purpose of classifying the mails?

Mr. TOWNER. For any purpose. It has relation to the department's passing upon the classification or any other question; but I do not care to take up the time of the committee now.

Mr. MADDEN. Well, I may say in connection with that, if you will permit me, that I practically administered this law 15 years and that is the first time I knew of it. I never knew and never took into consideration what the assets and liabilities were in determining the rate upon the tangible thing that was to be transmitted in the mails, and I beg to differ with you on that subject. It may be that you are right.

Your attention is invited to a careful consideration of the above statement, particularly to the estimated value of the second-class privilege, as without this valuation instead of a surplus there would be a deficit. The earning power of the company is alleged to be about \$1,000,000 per annum gross. This is made up of \$150,000 subscriptions, about \$800,000 advertising, and \$3,000 rents. The expense for operating is fixed at about \$640,000 per annum, and therefore the net earnings are about \$360,000 per annum. The above statements are made by Mr. Lewis to us. Our investigation establishes that the earnings are really much less. For instance, a commission of 40 per cent is paid agents for club rates, so that instead of 10 cents being received, the company receives but 6 cents for a single subscription. The subscription list is largely made up of this class of subscriptions. Again it will be noted that the operating expenses are not nearly all charged in his account. This will be referred to later in detail. According to our showing, taken from his books, his receipts for subscriptions will approximate \$85,000 per annum instead of \$150,000. The records in his office show the following receipts for two months, as an example in support of our contention:

Subscriptions received:

February, 1905	\$7, 500. 00
March, 1905	6, 000. 00
Average per month on this basis.....	7, 000. 00
Average per year on this basis.....	84, 000. 00
Advertising for February, 1905:	
Woman's Magazine.....	48, 031. 02
Woman's Farm Journal.....	19, 555. 89
Advertising for March, 1905:	
Woman's Magazine.....	49, 419. 23
Woman's Farm Journal.....	19, 295. 18

According to this basis the advertising receipts are about \$800,000 per annum, as Mr. Lewis states. The gross revenue is therefore about \$888,000 per annum instead of \$1,000,000. In consideration of the net earnings, the amount charged to operating expense should be increased by not less than \$60,000 per annum, the amount paid for advertising these publications in other newspapers and magazines. These amounts do not appear in the operating expenses, but Mr. Lewis explained to us that he took care of that expense personally. We secured a copy of this account which follows:

April, 1904.....	\$981. 42
May, 1904.....	2, 319. 41
June, 1904.....	1, 550. 35
July, 1904.....	920. 48
August, 1904.....	1, 293. 44
September, 1904.....	2, 384. 13
October, 1904.....	6, 648. 24

November, 1904.....	\$10,907.76
December, 1904.....	1,088.70
January, 1905.....	7,104.43
February, 1905.....	15,036.87
March, 1905.....	6,482.95

Total for 12 months ending March, 1905..... 57,218.18

During the last year a 6 per cent dividend was paid to stockholders, but with the system of records and failure to properly charge such items as the above, it is difficult to state with any degree of certainty whether the business really earned any dividend at all. As further proof of this point, the item of bills receivable in the assets contains a charge against the Peoples United States Bank, another of Lewis's enterprises, for \$146,375.63, which depends on the approval of the secretary of state of Missouri, and will most certainly be disallowed in part. From February 18, 1905, to March 23, 1905, the Lewis Publishing Co. borrowed from E. G. Lewis \$88,000, and he in turn sold these notes to the Peoples United States Bank. We believe that if this concern was earning any such sum as alleged, it would not be necessary to conceal items of expense or borrow money for current expenses.

Mr. REDFIELD. Were these men certified public accountants?

Mr. MADDEN. Not that I know of. It looks as though all these questions entered into the question of mail rates.

While the condition of the business and manner of doing business may not be directly the subject of this investigation, yet it has such a bearing on the subject that it must be touched upon and given consideration. Mr. Lewis states that the publications can be issued and circulated at the rate of 10 cents per year, 16 pages, without any advertising patronage, owing to the wonderful facilities afforded by the specialized printing plant which has been constructed for their production. The operating expenses have been shown to be about \$700,000 per annum, and the revenue from subscriptions about \$85,000 per annum. Comment is not necessary on this statement. Without the advertising patronage there would never be another issue of either magazine. It is evident that the publications can not be circulated without the revenue derived from advertising, and that the cost of each magazine to the publishers is about 50 cents per annum. This is on the basis of 1,700,000 subscribers besides the sample copies, and an operating expense of \$700,000 per annum.

We have given most of our attention to the question as to whether or not these publications are not primarily intended for advertising purposes, and whether the subscription rate is not "nominal" within the meaning of the Postal Laws and Regulations of 1902. If the operating expense is \$700,000 per annum and the revenue from subscriptions only \$85,000 per annum, then it is circulated at less than cost, although this is denied by the publisher. We undertake to show that the rate is nominal, because it is furnished at less than cost, and that while it may have a value of 10 cents a year as a literary production, yet it is and has been conducted primarily for advertising purposes and as an aid in a scheme to defraud. The case must therefore be considered on broader grounds than usual because of these complications. If the operating expense is \$700,000 per an-

num and the subscription receipts but \$85,000 per annum, then there can be no question but that the advertising revenue of \$800,000 per annum becomes the principal business, no matter what the original purpose of the publication was, and according to paragraph 3, section 437, Postal Laws and Regulations of 1902, and the construction therein placed on the word "primarily," these publications are not entitled to the second-class privilege. Section 428, Postal Laws and Regulations of 1902, provides that the publication shall not be entered if published for circulation at nominal rates. The construction placed on the word "nominal" brings these publications within the inhibition of the regulations, and for the reason that the publications could not be circulated at all at the present rate without being primarily intended for advertising purposes.

Section 437, Postal Laws and Regulations of 1902, provides that publications owned and controlled by one or several individuals or business concerns and conducted as an auxiliary and essentially for the advancement of the main business or calling of those who control or own them are primarily designed for advertising purposes. "Primarily" is held to mean principally, not incidentally. We have already shown that the advertising revenue is nearly ten times the subscription revenue, hence it follows that the subscription is incidental and nominal and the advertising the principal object. We transmit rate cards showing the advertising rates to be \$6 per agate line display and \$7 per agate line reading matter in the *Woman's Magazine* and \$2 per agate line display and \$3 per agate line reading matter in the *Woman's Farm Journal*, according to Mr. Lewis the highest advertising rate in the world and the lowest subscription rate (nominal). The question as to whether a publication is primarily designed for advertising purposes is one of fact, to be determined from the evidence. In addition to the evidence already presented it becomes necessary to introduce the connection between the Lewis Publishing Co. and the other business concerns which are owned and controlled by the officers of said company, and which we propose to show have been organized and promoted by E. G. Lewis through the medium of these two publications under consideration.

Now, gentlemen, I call attention to that statement to show that at the time the inspectors went out and made an investigation of every enterprise and everything connected with the name of E. G. Lewis, and it is repeated here that they were all put under the ban.

Mr. REDFIELD. I want to ask if I understand rightly what this report is supposed to mean. This is the question that is concerning me. The statement is made there by inspectors that the subscription rate is nominal. I have had something to do with the printing business in my life. That is the case with most of the leading newspapers, that the advertising is really the core of the business. There is not a 1-cent paper that pays for itself at the subscription rate or sale price. Are they excluded from the second-class rates?

Mr. BRITT. If you ask me that question, I will say they are not.

Mr. REDFIELD. Then it is pertinent?

Mr. MADDEN. It is not. It is simply in the report.

Mr. BRITT. The document is being offered by Mr. Madden on behalf of his client, and I shall address myself to it at another time.

Mr. MADDEN. Entirely impertinent, as the record will show, and it was so tread later in the department.

Mr. REDFIELD. So far as I am familiar with the facts, the facts here stated are true as to the leading daily papers.

Mr. MADDEN. If you will permit me right here, I would like to make a statement in that connection. I represented the Post Office Department before the congressional commission in 1906, and at that hearing in New York Mr. Norris, whose name is quite familiar in the public records here, who represented the newspapers, called attention to that provision of the law excluding publications primarily for advertising purposes. If that law was enforced, not a publication would be left in the second class. They are all designed primarily for advertising purposes.

Mr. REDFIELD. Let me ask Mr. Britt a question. The Ladies' Home Journal announced that, without altering its subscription price, it would issue twice as many numbers; that they would issue a number twice a month instead of once. Did your department take any action in regard to that?

Mr. BRITT. Do you mean in connection with the question of whether it was for advertising purposes?

Mr. REDFIELD. Yes.

Mr. BRITT. It did not. But it took the necessary action on the change of frequency of issue and the application for reentry.

Mr. REDFIELD. Afterwards the Ladies' Home Journal went back to once a month. Was that upon a case originating in your department?

Mr. BRITT. It was not. The department had no right to inquire into that. As a matter of fact, the department made no inquiry into it as to the change of frequency of issue, except to see that there was compliance with the regulation that where there is a change of frequency of issue the publisher must go through the formality of reapplication and reentry.

Mr. MADDEN (continuing to read report):

These publications being conducted in fact as auxiliaries to the main business of Lewis, Kramer & Cabot and therefore primarily designed for advertising purposes. As each of these concerns is under investigation and reports are submitted giving the facts, copies of which are forwarded herewith, they need be but briefly referred to here so far as they affect the questions under consideration in this case.

The concerns in which Lewis, Kramer & Cabot are interested and which the magazines have been used in the furtherance thereof are:

The Lewis Addressing Machine Co., University Heights Realty & Development Co., Controller Co. of America, Lewis Publishing Co., United States Fiber & Stopper Co., World's Fair Contest Co., Development & Investment Co., Peoples United States Bank, "Camp Lewis," California Vineyards Co., Laguna Chico Plantation Co.

The question of the abuse of the second-class privileges also includes the construction of the question as to whether or not there is a scheme to defraud. I will first explain about what Camp Lewis was, on the side. Mr. Lewis has created out of what was at one time a cow pasture a city called University City. It is laid out in beautiful residence lots, boulevards, circling around in all directions, and it adjoins St. Louis. The peculiar construction under the State law is this: St. Louis is a corporation in the State and outside of any county in the State. University City adjoins and the street cars run straight through both. The population of University City now,

I believe, is something like 5,000, and it is a beautiful residence park. The only business done there is the business of the Lewis Publishing Co., and from the photographs you will see it is an inoffensive plant and in many ways ornamental.

In the beginning, when they were putting up this plant, the World's Fair was in progress, and Mr. Lewis's publications had a tremendous circulation throughout the country. In order to help the condition of those magazines he built Camp Lewis. It consisted of two blocks in University City devoted to camps, with a large center place where the people could eat, and he furnished a home for them there while they were visiting the World's Fair, if they were subscribers, at a very nominal cost. I believe he fed and housed—if you can call camping housing—100,000 people, anyway. I think he charged them \$1 a day for what they ate and for sleeping there, and he figured that was a good proposition, because it advertised his magazines throughout the country. This is what the inspector referred to here [reading from report]:

In April, 1904, "Camp Lewis" is exploited editorially; financially it was a failure. In the same issue is an editorial by Lewis as president of the Woman's Magazine, pushing sales of stock of the Peoples United States Bank.

I will omit now from this paper.

(The report referred to, not read in full by Mr. Madden, continues as follows:)

The Lewis Addressing Machine Co. was organized by Lewis about five years ago. It was a machine for addressing newspaper wrappers. After disposing of a part interest, it proved a failure and is now in oblivion.

University Heights Realty & Development Co. was organized by Lewis in October, 1902, capital \$1,000,000—\$300,000 preferred stock and \$700,000 common stock; \$120,000 preferred stock sold to public; some of the preferred and most of the common stock held by Lewis. Dividends on this stock held by public guaranteed by Lewis and paid by Development & Investment Co. This is a corporation which took over a tract of land adjoining the Magazine Building and is engaged in improving same with the intention of placing it on the market as a residence subdivision. There is a lien of \$750,000 on this property, besides the liability on capital stock, making a net liability, according to the financial statement furnished by Mr. Lewis March 14, 1905, of \$857,615.56. This is expected to be extinguished by the sale of lots.

The Controller Co. of America is a corporation organized by Lewis to manufacture and install an automatic device for telephone pay stations. Capitalized at \$200,000. Lewis holds about \$80,000. Net liabilities as shown by financial statement rendered by Mr. Lewis, March 14, 1905, \$272,076.99.

Lewis Publishing Co., capital \$1,200,000, nearly \$1,000,000 owned by Lewis, Kramer & Cabot; publishes and circulates Woman's Magazine and Woman's Farm Journal; claims a net surplus of \$407,733.74, March 14, 1905, but is made up of theoretical asset of temporary franchise which is valued at \$1,250,000.

United States Fiber & Stopper Co. was organized and incorporated by Lewis January, 1903, capital stock \$1,000,000. Lewis holds 617,792 shares; balance sold to public, some as high as \$2 per share, par value \$1. The indebtedness is assumed by Development & Investment Co. Owns patents for the manufacture of stoppers from pulp. No products have ever been sold, and the value of the patents is yet to be determined.

World's Fair Contest Co. was organized by Lewis, Kramer, and Cabot to conduct a guessing contest on the number of paid admissions to the World's Fair at St. Louis, Mo., in 1904. Guesses sold at 25 cents each; \$85,000 paid out in prizes. Scheme was a lottery, but was permitted to operate to a conclusion. A profitable enterprise, and netted probably over \$100,000.

Development & Investment Co. was organized by Lewis as a holding company; assets made up of Lewis's holdings in his various companies. Capital stock \$500,000, of which Lewis holds 95 per cent; balance held by Kramer and

Cabot. As this is a sort of a summary of his schemes, we present the financial statement furnished by Lewis March 14, 1905, showing condition on that date:

Assets.

Preferred stock Lewis Publishing Co.....	\$34,500.00
Common stock Lewis Publishing Co.....	710,000.00
Preferred stock University Heights Realty & Development Co.....	10,580.00
Common stock University Heights Realty & Development Co.....	537,595.00
Stock United States Fiber Stopper Co.....	567,886.00
Other stocks and bonds, at par and dividend paying.....	45,643.75
Controller Co. of America.....	54,145.24
Stocks, uncertain value.....	84,450.00
Demand loans.....	142,139.45
Time loans.....	29,000.74
Cash.....	5,147.06
Life insurance, E. G. Lewis.....	380,000.00
Real estate account in suspense.....	117,848.75
Total assets.....	2,728,935.99

Liabilities.

6 per cent bonds outstanding, two and four years.....	165,500.00
8 per cent bonds outstanding, three and four years.....	131,600.00
Pass-book accounts.....	19,607.49
Accounts payable, stock and bond purchases.....	77,455.48
Notes payable, land purchases, two and three years.....	117,848.75
Capital stock.....	500,000.00
By balance, surplus.....	1,716,924.27
Total liabilities.....	2,728,935.99

This company has sold to the public bonds drawing 6 and 8 per cent interest, which are really but promissory notes of Lewis. Only one of the corporations making up the holdings of the company, which has been under investigation, has earned a dividend. The Lewis Publishing Co. paid a 6 per cent dividend last year, but if the advertising expense for that company had been charged to operating account, there is a question if that dividend would have been paid.

The Laguna Chico Plantation Co. was a company in which Lewis was interested to a lesser degree, but while it made large promises on its bonds, it was not a financial success.

The California Vineyards Co. was a seller of bonds similar to the others, and while Lewis states that he holds some of the bonds, but no other stock or interest, we believe that he either received the bonds for his interest, or at least did not purchase them as an outsider would. It will be noted that as soon as the Peoples United States Bank began to invest in high-class securities for the security of its stockholders, one of its first investments was in the bonds of this company. Bonds were freely advertised in both magazines.

The Peoples United States Bank is the most important concern conducted by Lewis in connection with the Lewis Publishing Co., and he has sold to the public stock to the extent of about \$5,000,000. He has received on this stock in money already over \$2,000,000, probably \$2,500,000, as the remittances are coming in at the rate of several thousand dollars daily. We have undertaken to demonstrate the fraudulent nature of that concern and the violations of both State and Federal statute by Lewis and his associates, and believe the time is not far distant when even if not interfered with a crash will surely come which will result in tremendous loss to the public who are his patrons.

Our report on that case should be carefully considered in connection with our recommendations in this matter. Without the privilege of reaching the public through the columns of these two magazines at the rate of a cent a pound, it would be impossible to obtain this vast sum of money from the public to be disbursed and converted to the uses of Lewis, Kramer & Cabot as we have shown. (See carbon of report on bank herewith.)

We have shown the interest of Lewis in the concerns mentioned and now invite your attention to the presentation of the facts which prove that the

magazines are auxiliaries for these concerns and therefore not entitled to the second-class privilege.

The first issue of the Woman's Magazine was September, 1902. On page 2 will be found the advertisement of the World's Fair Contest Co. and also the Development & Investment Co., offering its bonds for sale in extravagant and untruthful terms.

October, 1902, the Laguna Chico Plantation Co. offers its bonds and the magazine guessing contest—a lottery.

November, 1902, the World's Fair Contest Co. has a page.

December, 1902, the University Heights Realty & Development Co. has a full page promising to investors in the stock extravagant and impossible returns.

In May, 1903, the United States Fibre Stopper Co. advertises that the most remarkable invention of the past century has been patented and perfected and offering stock at par for a period of 30 days; after that at \$2. Up to date not one stopper has been sold, and outsiders are now offering their stock at 35 cents per share.

In June, 1903, United States Fibre Stopper Co. advertises that the stock will go to \$2 in a "short time."

The July, 1903, issue again fixed the time for stock to go to \$2 at July 20.

In August, 1903, issue United States Fibre Stopper Co. stock offered at \$2 and stating that all the stoppers they could produce for months had already been sold. In September, 1903, the world's fair free trip was introduced as a side issue to encourage new subscriptions.

In October, November, and December, 1903, and January, 1904, the development and investment company was pushing the sale of its bonds.

In December, 1903, the California Vineyards Co. has a page, and over the signature of the editor, E. G. Lewis, in an editorial, first appears the proposed Peoples United States Bank. In this he sets up the advantages of cooperation between the subscribers to the Woman's Magazine and the stockholders of the bank. This article sets out as clearly as any argument we might advance the purpose of making the Woman's Magazine an auxiliary of the bank.

In March, 1904, page 16, appears an editorial signed by E. G. Lewis as president of the Lewis Publishing Co., appealing to the subscribers of the Woman's Magazine to buy stock in the bank promoted by Lewis, and in which he untruthfully states, "I have pledged my entire fortune in the bank, and many of my associates are doing the same." He never put a cent of his own money in this enterprise. This is the beginning of the most far-reaching and important of the many visionary, deceptive, and fraudulent schemes devised by Lewis, with the aid of his publications, and which he candidly explains in a pamphlet entitled "Banking by mail," which was sent out to each of the subscribers of the two magazines. This pamphlet should be studied carefully, as it explains directly to his subscribers that the two magazines will be conducted as an auxiliary to the bank. On page 7 of this pamphlet, he prints in capital letters as intending to give the greatest stress to this point, "There must be some medium of constant and regular communication, such as a great publication." Bear in mind that this scheme is the last of a series designed to obtain money from the public by means of false statements. This pamphlet is specially presented as evidence that the Lewis Publishing Co. is an auxiliary of the bank. In addition, the statements therein made are false, and the evidence is at hand in Lewis's own statement to show that fact on the front page. Illustration of the Woman's Magazine Building, built without lien, etc. Please note financial statement of Lewis Publishing Co. showing an indebtedness of nearly \$400,000 for construction of this building. Lewis states that he started the magazine on \$1.25 (see the statement of his former partner, H. E. Nicholas, that he had \$2,000 in bank then). All the statements being used concerning the Lewis Publishing Co. to induce the public to buy the stock of the bank. Every one of the predecessors of the bank scheme has been proven a failure so far, and in the May, 1905, edition Lewis practically confesses the absolute failure of the bank plan, after having obtained vast sums of money, and now proposes to convert the bank into a pawnshop.

We submit two circular letters as showing the connection between the Lewis Publishing Co. and the Peoples United States Bank. April 19, 1904, he wrote F. S. Rutherford, Sullivan, Mo., as follows: "Dear friend, as rapidly as possible my letter telling about our postal bank is being sent to each of our 2,000,000 readers of my magazines," etc., sent out on stationery of Lewis Publishing Co. Another circular letter sent out by Lewis, president Woman's Magazine, to A. L. Ward, Fairmont, Minn., contains: "For months past I have

been telling you each issue in the columns of the Woman's Magazine and the Woman's Farm Journal of the great mail bank which I am organizing," etc.

The question as to the abuse of the second-class privilege extends further than the consideration as to whether or not the publications are not primarily designed for advertising purposes, and also includes the consideration of the question as to whether or not they are not primarily designed as an aid of a scheme to defraud.

In April, 1904, Camp Lewis is exploited editorially, and financially it was a failure. In the same issue is an editorial by Lewis as president of the Woman's Magazine, pushing sale of stock in the Peoples United States Bank.

In May, 1904, Lewis, as president of the Lewis Publishing Co., editorially devotes his entire space to the bank. The World's Fair Contest Co. is also in evidence.

In June, 1904, Lewis enlarges on the bank scheme with two full pages, illustrated, all over his signature as president of the Lewis Publishing Co.

In July, 1904, as president of the Lewis Publishing Co., he writes a two-page illustrated article, and acknowledges over 10,000 subscriptions to the bank stock since the last edition.

August, 1904, Lewis, as president of the Woman's Magazine, in another two-page illustrated article announces 40,000 stockholders and appeals for more. The World's Fair Contest Co. has a page and Camp Lewis a page.

September, 1904, Lewis, as an individual, appeals for more money for the bank. He sets a date for close of subscriptions three weeks hence. (He is still selling stock.) Camp Lewis and the World's Fair Contest Co. are also exploited in this issue.

October, 1904, Lewis, as an individual, gives the bank two pages, the World's Fair Contest Co. a page, and Camp Lewis a mention.

November, 1904, Lewis, as an individual, announces 60,000 stockholders to the bank and wants more. He again sets the time for closing the subscription books as "almost any day."

December, 1904, Lewis, as editor of the Woman's Magazine, appeals for 100,000 stockholders in the bank and falsely states that he has "put up an enormous amount of cash himself."

January, 1905, Lewis appears both as an individual and as president of the bank requesting more stockholders, and also begs for savings deposits.

February, 1905, Lewis, as an individual, announces that \$5,000,000 has been subscribed but has more to sell.

March, 1905, Lewis is still urging sale of bank stock and savings deposits. He now proposes to issue a monthly pamphlet entitled "The Bank Reporter." This investigation was then on, and he probably concluded it wise to amend his plan so as to avoid taking all the space in the magazine. The Bank Reporter is published by the Lewis Publishing Co., and, as it is a violation of State law for a bank to engage in the publication of such a pamphlet, and Lewis was so advised by the State authorities, he states that he will personally bear this expense. It will probably find its way to the Development & Investment Co.

The Woman's Farm Journal in February, 1903, carries the advertisements of the United States Fiber Stopper Co., the Development & Investment Co., University Heights Realty & Development Co., and the World's Fair Contest Co.

March, April, May, June, July, August, and September, 1903, the United States Fiber Stopper Co. and World's Fair Contest Co. appear therein.

In October, 1903, the World's Fair Contest Co. and the Development & Investment Co. have a page each.

November and December, 1903, the Development & Investment Co. and the California Vineyards Co. offer their bonds.

December, 1903, January, February, March, April, and May, 1904, the World's Fair Contest Co., California Vineyards Co., Development & Investment Co., and Camp Lewis appear.

June, 1904, is the first appearance of the Peoples United States Bank, reading matter covering two pages by Lewis, as president of the Lewis Publishing Co., being practically the same matter that appeared at that time in the Woman's Magazine, and in every subsequent edition the bank is exploited by Lewis in his various capacities as president of the Lewis Publishing Co., as an individual, and as an officer of the bank.

The foregoing, while rather tedious, is given to show the inseparable connection between the publications and the auxiliary concerns. Lewis states that the matter relating to the bank which appeared in the magazines was paid for

at the regular card rate of advertising by him in person. We obtained a copy of the account against the bank for advertising, and find that, so far as the Farm Journal is concerned, all the matter was charged for, but not at the card rate. In the Woman's Magazine no charge is made for any matter appearing prior to July, 1904, although the first matter appeared in February, 1904. The total charge for advertising the bank by the Lewis Publishing Co. is \$52,017.26.

The following is the account:

WOMAN'S FARM JOURNAL.

Dates.	Number of lines.	Price per line.	Total.
1904			
June.....	1,350	\$1.36	\$1,836.00
July.....	1,400	1.36	1,904.00
August.....	1,400	1.21½	1,700.00
September.....	1,018	1.21½	1,233.71
October.....	1,179	1.21½	1,431.64
November.....	750	1.21½	910.71
December.....	696	1.21½	850.00
1905			
January.....	1,179	1.21½	1,431.64
February.....	723	1.21½	877.93
March.....	526	1.26	665.00
April.....	749	1.21½	909.50

WOMAN'S MAGAZINE.

1904			
July.....	1,400	\$4.08	\$5,712.00
August.....	1,400	3.64½	5,108.00
September.....	1,018	3.64½	3,701.14
October.....	1,400	3.64½	5,100.00
November.....	681	3.88	2,642.28
December.....	693	3.88	2,658.04
1905			
January.....	1,178	3.64½	4,291.26
February.....	1,018	3.64½	3,708.43
March.....	780	3.64½	2,841.43
April.....	745	3.64½	2,713.93
Total.....			\$2,017.26

The facts are that this advertising has not been paid for by anyone; but a bill has been rendered against the bank for advertising and printing by the Lewis Publishing Co. for \$63,338.27, and the bank has made application to the secretary of state of Missouri for authority to take up this expense as a liability of the bank. Therefore the intention is to have the stockholders of the bank stand the expense out of the earnings. A very clever exhibition of high finance. This seems to have been a scheme devised about June, 1904, because there were 98 lines in the February, 1905, magazine, 49 in March, 133 in April, 224 in May, 1,400 in June, for which no charge is made.

We now invite your attention to another feature of this case, being additional evidence of fraud and a violation of section 1593, Postal Laws and Regulations of 1902. Under these facts Mr. Lewis is liable criminally, and the facts will be presented to the honorable United States district attorney for his consideration. It also has a direct bearing on the second-class privilege which is now enjoyed by the Woman's Magazine under a temporary permit.

Mr. Lewis secured an entry from the Post Office Department in 1899 for the predecessor of the Woman's Magazine, a monthly magazine entitled the Winner Magazine, published by the Mail Order Publishing Co. at St. Louis, Mo. On April 2, 1902, the Winner Magazine was cited to show cause why it should not be denied the second-class privilege for four reasons: First, subscription list was not legitimate; second, primarily designed for advertising purposes; third, issued and circulated at nominal rate; fourth, not founded on its merits as a news or literary journal.

In response to this citation arguments were submitted April 7, 1902, by E. G. Lewis, as president of the Mail Order Publishing Co., in behalf of the Winner

Magazine through the postmaster at St. Louis, Mo., Mr. F. W. Baumhoff; and it appears that Harrison J. Barrett was also employed as an attorney for the Winner Magazine before the honorable Third Assistant Postmaster General. No action was taken by the Post Office Department until August 4, 1902, when the postmaster at St. Louis, Mo., was notified that this case would not be decided until a decision had been rendered by the Supreme Court of the District of Columbia on other cases in which like questions were involved.

This decision was then expected at an early date. Upon the receipt of this information, Mr. Lewis proceeded to organize the Woman's Magazine, and on August 21, 1902, filed his application for entry of the Woman's Magazine, the Winner Magazine ceasing to exist with the August (1902) number. We secured a certified copy of this application, and invite your attention to question 4 and the answer thereto. This brings the information that the Woman's Magazine is published by the Mail Order Publishing Co., the officers and promoters being E. G. Lewis, president and treasurer; M. G. Lewis, vice president; F. J. Cabot, secretary. (Kramer did not come in until April, 1903.)

Question 5. Are they in any way interested pecuniarily in any business or trade represented by the publication, either in the reading matter or in the advertisements?—Answer. No.

Question 6. Who are the editors?—Answer. E. G. Lewis, F. J. Cabot, Marguerite Codd, Mabel G. Lewis, Mrs. F. J. Cabot, Miss M. A. Patrick.

Question 7. Have the editors any pecuniary interest in any business or trade represented by the publication, either in the reading matter or in the advertisements?—Answer. No.

This application was sworn to and subscribed by E. G. Lewis, as president of the Mail Order Publishing Co., on August 21, 1902.

We invite your attention to the first edition of the Woman's Magazine, September, 1902, and the copy on which this application is based. In this issue appears the advertisements of the following firms, all of which are conducted by either the editors or proprietors of the Woman's Magazine:

Edwards Publishing Co., proprietor, M. G. Lewis; Hygienic Chemical Co., proprietor, M. G. Lewis; Chemical Freezer Co., proprietor, M. G. Lewis; Claire Art Co., proprietor, M. G. Lewis; A. W. Cooley Chemical Co., proprietor, F. J. Cabot; Mrs. M. R. Stephens, proprietor, F. J. Cabot; Mrs. F. Huntley, proprietor, F. J. Cabot; J. V. Hunter, proprietor, F. J. Cabot; J. A. Hunter, proprietor, F. J. Cabot; Ozark Herb Co., proprietor one-third, F. J. Cabot.

These advertisements are such as the department desired information on when Mr. Lewis made this application. The concerns are owned by either the editors or proprietors, and they have a pecuniary interest therein. It was the duty of Mr. Lewis, in making this application, to truly state the character of his publication, which he did not do. It matters not whether the publication would not have been denied entry if the true character had been stated. If this information was falsely stated, the result was to deceive the department, and a true statement of the facts might have had an effect in deciding on the admissibility of the publication. These advertisements have continued and have been added to largely, as has already been shown, principally in bond selling ventures. It is alleged by Mr. Lewis that these are not free advertisements, but are paid for at card rates. According to Mr. Lewis's methods in handling his many schemes, one hand washes the other with painful regularity. The Lewis Publishing Co. lends to Lewis; he sells to the Development & Investment Co., and the Peoples United States Bank closes the deal by assessing the stockholders for necessary expense.

On August 25 the postmaster at St. Louis, Mo., was instructed to accept the Woman's Magazine for mailing, provided the postmaster thought it proper to do so, as information had been received that application would be made for entry. Inasmuch as it was a successor of the Winner Magazine, already entered, deposit at third-class rate would be waived pending consideration of the application for entry of the Woman's Magazine. Additional arguments were submitted by Lewis October 10, 1902, but no further action had since been had on this application. The Woman's Magazine has therefore no certificate of entry, and is still operating on the temporary permit pending the consideration of the original application. Your special attention is invited to each and every issue of the Woman's Magazine and to section 442, Postal Laws and Regulations of 1902, paragraph 3. A statement appears on each edition that it has been entered October, 1899, as second-class matter. It has not been entered, and did not exist in October, 1899. This statement is in violation of the regulations, and the publisher should be required to amend his statement

to read, "Application for entry has been made." The statement that it is entered as second-class matter conveys the false impression that it has met the requirements and has the approval of the Post Office Department, and serves to aid in his scheme to defraud in valuing his franchise for the Woman's Magazine at \$1,000,000.

Section 444, Postal Laws and Regulations of 1902, provides that when a publication has been accorded second-class privileges it shall not be suspended without a hearing. In view of the fact that the Woman's Magazine has not been accorded second-class privileges, no hearing is necessary. The case of the application for entry for the Woman's Magazine is still pending, and in its consideration the evidence of fraud and misrepresentation in the application, the fact that it is circulated at a nominal rate, and that it is primarily designed for advertising purposes, as shown, are so apparent that we are convinced that the Woman's Magazine is not entitled to the privilege of the second-class rate of postage.

In the case of the Woman's Farm Journal, we hold that it is circulated at a nominal rate; that it is primarily designed for advertising purposes, and that both publications are issued and circulated at one-eighth the cost, and the advertising patronage is nearly 10 times the subscription revenue; that this result is obtained by reason of the nominal rate, which produces an abnormal subscription list which produces the advertising patronage, being *prima facie* evidence of the primary object of the publications.

The numerous bond and other schemes of a questionable character which the editors and proprietors are interested in and for which the Lewis Publishing Co. is used as a vehicle for reaching the public and inducing it to invest its money when, in fact, the investigation discloses that they are in part, at least, schemes devised to defraud within the meaning of sections 1617 and 490, Postal Laws and Regulations of 1902, makes it necessary to consider these features in connection with this case. The very keystone of the arch composed of these enterprises is the Lewis Publishing Co. Without the pound rate the Peoples United States bank could not have been organized and the money of the confiding stockholders converted to the personal use of Lewis and his immediate associates.

The position taken by the honorable Third Assistant Postmaster General, viz, that the case will not be decided until a decision has been reached in the other cases where injunction suits have been entered against the department, we hope may be reconsidered and the case of the Woman's Magazine taken up at once and a decision rendered by him on the application for entry, for the reason that the financial interests of 100,000 people are in danger, as shown by our report on the investigation of the Peoples United States Bank. These questions are in no sense present in the cases covered by the injunction, but are additional arguments for the revocation of the second-class privileges accorded these two publications.

We recommend that the Woman's Magazine be refused entry for circulation at the second-class rate and the temporary permit now held canceled. We recommend that the Woman's Farm Journal be cited to show cause why it should not have its certificate of entry canceled for the reasons already given, viz, that the rate is nominal and primarily designed for advertising purposes.

Very respectfully,

R. M. FULTON,
Post-Office Inspector.

An explanation is due there. I explained a while ago that the reform of the abuses of the second-class mail matter was under way when this matter came up in the department, and had been under way for several years. We dealt with the publications class by class, so as to put as far as possible all people on the level. Finally we got to the mail-order publications, which included all the magazines, practically. About that time there were some hearings given, and among the publications under consideration were Gov. Hill's publications in Maine. You will remember that Augusta, Me., is a large publication center. There were five publications of Gov. Hill and about five of the Gannett publications. There were some hearings, and the publishers went out in the district court and secured injunctions restraining the Postmaster General and the Third Assistant

Postmaster General from taking any action whatever until the matter was heard. Now, these injunctions were pending at the time this report was made, and the Third Assistant said—and this is what is referred to here—that so long as those injunctions stood on 19 publications no one in that class would be disturbed until the question was settled by the court. Here they ask that that rule be reconsidered.

I will repeat the conclusion in this report:

We recommend that the Woman's Magazine be refused entry for circulation at the second-class rate and the temporary permit now held canceled. We recommend that the Woman's Farm Journal be cited to show cause why it should not have its certificate of entry canceled for the reasons already given, viz: That the rate is nominal and primarily designed for advertising purposes.

That is signed by R. M. Fulton, post-office inspector.

That report was handed to the Third Assistant Postmaster General on the 19th day of May, 1905, and the matter was under consideration. There were several conferences with the Postmaster General, at which I drew his attention to the irregularities of the procedure. I called his attention to the injunctions and to the understanding generally that nothing would be done until the questions involved in court procedure were settled.

While the matter was under consideration, on May 31, 1905, a telegram was received from Inspector Fulton at St. Louis, the purpose of which was to hurry action by the department on both reports. This telegram, like the reports, was addressed to the chief post-office inspector of the Postmaster General's office. A copy was sent to the Assistant Attorney General and a copy to the Third Assistant. The telegram closes with these words: "I suggest concerted action part of Assistant Attorney and Third Assistant on reports of 16th inst." The "16th inst." was a mistake. The reports were dated the 17th.

I read a copy of that telegram and call attention to its air of assurance. Plainly the man who composed and signed it seemed to have little doubt that the "recommendations" in the two reports to which he referred would be followed.

The telegram in full is as follows:

[Telegram.]

ST. LOUIS, May 31, 1905.

CHIEF POST OFFICE INSPECTOR,
Washington, D. C.:

Secretary of State Swanger here to-day. Greatly exercised over Lewis matter. He has been criticized for failure to act, and recently ordered Lewis to restore the \$400,000 withdrawn from bank, to cancel forged proxies, to account for all subscriptions received, to make good all material representations, and to select representative body of directors subject to approval secretary of state. Should money not be returned to-day Swanger may take charge of bank. At secretary's request I have asked postmaster to withhold delivery of citation until 4 o'clock this afternoon sharp, purpose of facilitating collection of shortage. Situation quite acute on account of its importance and because Woman's Magazine now receiving second-class privileges largely by sufferance of department is, and has been, the vehicle for promotion of bank and for Lewis schemes. I suggest concerted action part of assistant attorney and Third Assistant on reports of 16th instant. Please take up with proper officers.

FULTON, Inspector in Charge.

Mr. MADDEN (continuing). I think instead of "cancel forged proxies" it should read "forced proxies."

A copy of that telegram was handed to the Third Assistant Postmaster General. Thereupon he wrote to the Postmaster General.

The CHAIRMAN. You were then Third Assistant?

Mr. MADDEN. Yes; I was then Third Assistant. This is June 8, 1905. The Postmaster General was apparently out of the city. After the receipt of this report and then a copy of a telegram, the Third Assistant addressed the Postmaster General as follows:

[Memorandum for the Postmaster General.]

JUNE 8, 1905.

Case No. 52856-C. Report of Post-Office Inspectors William T. Sullivan and J. L. Stice, dated May 17, 1905, on the "Woman's Magazine" and the "Woman's Farm Journal," of St. Louis, Mo. Approved by Inspector in Charge R. M. Fulton May 17, 1905.

GEN. CORFELYOU: In this case of the "Woman's Magazine" and the "Woman's Farm Journal," of St. Louis, regarding which we have had some conferences, I beg to inform you that after you left the city Monday I decided, because of the circumstances, to cite the publisher to show cause why those two publications should not be excluded from the second class of mail matter. Separate citations were issued. The following is the essential paragraph of each:

"That this publication comes within the following prohibition of the statute: 'Provided, however, That nothing herein contained shall be so construed as to admit to the second-class rate regular publications designed primarily for advertising purposes, or for free circulation, or for circulation at nominal rates,' in that, first, it is primarily designed for advertising purposes; second, it is primarily designed to advertise the other businesses in which the stockholders and officers of the publishing company, and especially E. G. Lewis, are interested; third, it is primarily designed for free circulation or for circulation at nominal rates."

I doubt whether this action is in accordance with your temperate and judicial method of dealing with such matters, and it is not in keeping with the policy of caution and avoidance of immoderation which has heretofore prevailed in this office and which has been generally successful in dealing with abuses of the second-class mailing privilege. I was prompted to take the action by the earnestness with which the charges against these publications are pressed in the inspectors' report, although an examination of that report discloses that a very great deal of the evidence on which it is based has no relevancy to the question of postage rates; and this view is concurred in by the special counsel for the department on this class of cases. I was also influenced by the telegram of Inspector Fulton, dated May 31, a copy of which was furnished me, wherein he urged "concerted action part of Assistant Attorney and Third Assistant on reports of 16th instant." The hearing on the fraud-order case before the Assistant Attorney General is set for June 16; and the hearing on the right of the two publications to the second-class rates, before the Third Assistant Postmaster General, is set for June 17.

I do not understand why the questions of the issuance of the fraud order, on the one hand, and the right of the publications to a particular classification, on the other hand, should be the subject of "concerted action," but I did not wish to leave any obstacle in the way of the inspectors establishing the case which they appeared to conceive themselves able to establish.

I deemed it improper, however, to act upon their recommendation that the second-class privilege of the Woman's Magazine be summarily taken away. That publication has been, in fact, accorded that privilege and is in the enjoyment of it in the customary manner. The exact form of the authority is, in law, immaterial, and I am advised by counsel that it would be contrary to the statute requiring hearings in such cases to annul the privilege in a summary manner. This, I have ascertained, is also the view of the office of the Assistant Attorney General; and it is certainly in accordance with the dictates of justice, for a summary denial of this privilege, as recommended, would mean the sudden destruction of a business valued at upward of a million dollars and the rendering idle, if not useless, of a plant in which over \$400,000 appears to have been invested. The act of March 3, 1901, was designed to prevent just

such attempts to strike down, without warning, established enterprises, and I could not permit myself to be hurried beyond the law.

Owing to the unusual course of procedure in this case, it may become necessary at the hearing on June 17 for me to have the inspectors present to furnish the evidence which they summarized in their report.

Respectfully,

EDWIN C. MADDEN,
Third Assistant Postmaster General.

Mr. REDFIELD. That is addressed by you to the Postmaster General?

Mr. MADDEN. Yes.

Mr. REDFIELD. What do these inspectors receive in the way of pay at this time?

Mr. MADDEN. I believe it averages between \$1,400 and \$2,400. Am I right, Mr. Britt?

Mr. BRITT. Yes.

Mr. REDFIELD. Were they authorized by law or the custom of the department to call in accountants to their assistance in such cases?

Mr. MADDEN. Not that I know of.

Mr. REDFIELD. Do their duties call for them to be accountants?

Mr. MADDEN. Of postmasters' accounts.

Mr. REDFIELD. But of banks?

Mr. MADDEN. Not that I ever heard of before.

The CHAIRMAN. I knew this Inspector Sullivan, and have known him for 25 years. He was a very able man. He was a newspaper man and a lawyer.

Mr. MADDEN. Which Sullivan was that?

The CHAIRMAN. William T. Sullivan.

Mr. MADDEN. There are two Sullivans in this case. One of them is dead.

The CHAIRMAN. That is William T. He lived in my town for many years.

Mr. MADDEN. After the receipt of the May 17 report on the business of the publishing company, the Third Assistant had some conferences with the Postmaster General. His attention was called to the illegality of the procedure, to the unwarranted assumption of authority, to the valueless character of the report of its ostensible purpose, namely, that of questioning the right of the magazines to the mails. Attention was also directed to the fact that no complaint had been made against the company or the magazines by any person.

The receipt of the "concerted-action" telegram had a disturbing effect. The Third Assistant called in consultation the special assistant attorney provided by law for his office. It was decided that under the circumstances the best thing to be done was to cite the publishing company to show cause why its magazines should not be ruled out of the second class. It would not be well for the Third Assistant, now that he had pointed out the irregularities, to be too resistant.

On the same day, May 31, 1905, the Post-Dispatch, of St. Louis, published a display front-page article, covering a number of pages, concerning the affairs of the Peoples United States Bank and the Lewis Publishing Co. In great part the May 17th reports of the inspectors were quoted literally. If it were necessary to do so, witnesses could be brought to testify that this matter stood in type for a number of days, waiting signal for release.

The rules of the department make post-office inspectors' reports confidential. Even Congress is not permitted to see them, on the ground that it is incompatible with the public interest. These investigations had been made by the Government. Whether or not they were authorized by, required by, or were in conformity with any statute, they nevertheless, so far as the public was concerned, bore the stamp of approval of the Government. This publication in the Post-Dispatch of May 31, 1905, of the inspectors' "findings" was, therefore, bound to put the publishing company in a bad light and destroy its local credit and standing.

Later at the hearing before the Third Assistant, President Lewis, speaking for the company, complained bitterly of this public disclosure of the alleged findings in inspectors' reports in a hostile newspaper before either the bank or the publishing company had been made aware that reports had been made, or of what they consisted; and before either had been given an opportunity to meet the charges or statements in them.

Mr. REDFIELD. I understand you to say that the language of this newspaper report is verbatim of that of the inspector's report?

Mr. MADDEN. Yes, sir. I shall submit a copy and it may be compared.

Mr. REDFIELD. Then is the committee to infer from you that the inspectors permitted or through inadvertence allowed this report to be published without the Lewis Publishing Co. or the bank or either of them having heard of its existence?

Mr. MADDEN. Yes; that is so. I do not know whether the report was purposely given out or was purposely left so it would get out; but I do know this, that the Postmaster General on complaint of Lewis later instituted an investigation to find out how the report got out and was unsuccessful. As a comparison to that you may recall that when a few soldiers shot up Brownsville and they could not find the guilty persons they dismissed the whole company. Now, one of those four inspectors was guilty, but they all continued in their positions.

Mr. BRITT. Do I understand you to state it as a fact that one of the four gave this out?

Mr. MADDEN. No; I say it got out. I say it could not have gotten out unless they designed it so or left it so it would have gotten out. I do not think they would dare to give out a report like that, but I think in view of all the facts that will be shown in this case that he might dare to leave it where a newspaper man would find it and copy it.

Mr. MCCOY. What is the difference between that and giving it out?

Mr. MADDEN. Not very much, except the form.

The Third Assistant copied President Lewis's statement from the record and sent it in a communication of June 26 to the Postmaster General. A carbon copy of that communication will be submitted to be marked Exhibit No. 6 and a copy of the Post-Dispatch of May 31, 1905, containing the article, will be submitted and marked Exhibit No. 7. I beg to read the following extract from the communication of the Third Assistant Postmaster General. I am quoting

now from President Lewis at the hearing before the Third Assistant Postmaster General on June 17.

EXHIBIT No. 6.

Memorandum for the Postmaster General.

JUNE 25, 1905.

Gen. CORTELYOU: I have been devoting my time to-day to the cases of the Woman's Magazine and Woman's Farm Journal, published in St. Louis by the Lewis Publishing Co. In a sworn statement in connection with those cases, dated June 22, 1905, and received to-day, Mr. Lewis, in his official capacity for the publishing company, makes the following statement:

"For 14 years the Woman's Farm Journal has enjoyed this second-class privilege and the Woman's Magazine, under its present name, for nearly 3 years. This vast enterprise, employing nearly 500 people, with the investment of nearly a million dollars in its plant and equipment, has been undertaken and carried out in good faith under the enjoyment of this second-class privilege which has been accorded to them for this many years without let or hindrance by the Post Office Department, and which is now first brought into question at the instigation of irresponsible post-office detectives, who, for reasons best known to themselves, recommend that these privileges enjoyed in common by these publications with all other publications of the same high character, and under which vast investments have been made in good faith, a vast enterprise built up, hundreds of people earning their bread and butter, and the interests of over 2,000,000 people are being served, and every rule and regulation pertaining to this second-class privilege has been most carefully observed, shall now be denied to them on the charge of these inspectors. We would, at this point, respectfully protest to your department against the publication in the Post-Dispatch, a daily penny paper of St. Louis, which we understand is owned in New York, of the supposedly secret and confidential report made in all good faith voluntarily by us of the most minute details of the private affairs of this concern to these post-office inspectors for transmission to your department, together with the gratuitous comments, garbling, and the recommendations on the part of said inspectors, which publication, in the public prints nearly two weeks before we ourselves were advised of any such recommendation or action by your department, has been spread from one end of the land to the other to our great damage and loss, practically resulting in a public condemnation, trial, and execution without opportunity being given us to be heard in our own behalf. One of the principal charges made by these inspectors and heralded throughout the land to our undoing, having already been confessed by the inspector making it to be an error on his part, due to his gross incompetency in adding up a small column of figures. This protest, while addressed to your honor, is made with the full knowledge that far from its being an act on the part or with the knowledge of you and your department, is, on the contrary, equally abhorrent to you and your department, as it should be to all just men, but it is cited here by us as some slight evidence of the character and incompetency of those who make the charge against us and the nature of the espionage and persecution to which we have already been subjected in this matter by them."

The foregoing is copied from a document of some 14 pages submitted to-day by Mr. Lewis in relation to the case of the right of the Woman's Magazine and Woman's Farm Journal to the second-class rates of postage. The quotation is a part of two separate pages, the balance of which relate wholly to the question of postage rates. Inasmuch as the paragraph quoted constitutes a grave charge as to the conduct of the post-office inspectors who investigated the case, I bring it to your attention promptly.

There was also received at the department to-day in connection with this case a copy of the St. Louis Post-Dispatch of May 31, 1905; a copy of the St. Louis World of June 7, 1905; and a copy of Wetmore's Weekly, dated June 13, 1905. These were all furnished as exhibits in the case and in relation to the charge in the above quotation. I send them to you for your information.

Respectfully submitted.

EDWIN C. MADDEN,
Third Assistant Postmaster General.

EXHIBIT No. 7.

[St. Louis Post-Dispatch, May 31, 1905.]

**STATE OFFICERS INVESTIGATE \$2,500,000 MAIL-ORDER BANK OF EDWARD G. LEWIS;
POSTAL INSPECTORS ASK FRAUD ORDER.**

SECRETARY OF STATE DEMANDS REPAYMENT TO BANK OF \$411,000, ALLEGED LOAN TO LEWIS—INSPECTORS AVER FALSE REPRESENTATIONS OF METHODS AND PROFITS—PAID-UP STOCK AND DEPOSITS, \$2,350,000—STOCKHOLDERS SCATTERED THROUGHOUT UNITED STATES NUMBER 90,000, THEIR INVESTMENT RANGING FROM \$1 TO \$500 EACH—DEPOSITORS A LIKE NUMBER, WITH TOTAL OF \$350,000 INVOLVED.

Statistics of Lewis's bank from post-office inspectors' report.

Authorized capital, Mar. 18.....	\$2,500,000
Stock subscribed, Mar. 18.....	\$2,000,000
Stock subscribed, Mar. 23.....	\$2,124,539
Subscriptions paid up, Mar. 18, about.....	\$2,000,000
Number of subscribers (December).....	90,000
Face value of shares ¹	\$100
Borrowed by Lewis and allied firms when paid-up capital was \$500,000.....	\$411,203.18

Secretary of State Swanger, acting on reports compiled by State Bank Examiners Cook and Nicolls, and in pursuance of a conference with Attorney General Hadley, is here to-day to assume personal charge of the inquiry into the affairs of the \$2,500,000 Peoples United States Bank, of which E. G. Lewis is president.

Post-office inspectors here have recommended that a fraud order be issued against the bank by the postal authorities, forbidding it the use of the mails.

Informed by a Post-Dispatch reporter Wednesday afternoon that a fraud order against the Peoples United States Bank had been recommended by post-office inspectors, E. G. Lewis, president of the institution, laughed.

"That's a long way from being issued, isn't it?" he remarked.

"This investigation by the Post Office Department," he continued, "was made at my request. Further than that I have nothing to say."

Mr. Lewis was asked about the investigation by the State authorities and certain requirements laid down by Secretary of State Swanger for the future operation of the bank. He said:

"I received a letter from Mr. Swanger sometime ago, in which he made certain suggestions regarding the operation of the People's Bank.

BANK'S LOAN TO LEWIS.

"Among other things, he suggested that certain collateral, amounting to about \$411,000, be taken up by me. This is collateral on which I had borrowed from the bank to pay my own subscriptions to the capital stock.

"The collateral was considered first class in other banks wherein I had deposited it."

Relative to a new board of directors for the bank, suggested by the secretary of state, Mr. Lewis said:

"That is obviously a matter for the stockholders to decide.

"The secretary of state made no formal demand upon me, in any particular, merely suggesting those changes. I shall probably confer with Mr. Swanger this afternoon."

Mr. Swanger has laid down certain requirements in the nature of an ultimatum, which, if not complied with, will result in the State taking charge of the bank.

Following are Mr. Swanger's requirements of the bank:

1. Loans aggregating \$411,000 by Peoples United States Bank to E. G. Lewis, indorsed by officers, directors, and corporations controlled by him, now classed as cash assets of the bank, must be taken up and paid at once.

2. Present board of directors, composed of employees of Lewis, must be replaced by board subject to approval of State department.

¹ Subscriptions were received, however, in amounts varying from \$1 to \$500.

3. Alleged violation of charter rights of bank by investing its funds in stocks of other corporations, dominated by Lewis, must be rectified. Private enterprises of Lewis must be kept separate from banking business.

Lewis, as president of Peoples United States Bank, must sever his connection with outside enterprises in the least speculative.

4. Expenses said to be incidental to the promotion of bank, amounting to \$148,000, can not be charged against the bank. The bank must be reimbursed for money so used.

WANTS STOCKHOLDERS' NAMES.

5. Names of stockholders of Peoples United States Bank, where they reside, and amount of stock held by each must be exhibited on the bank's books in order that bank examiners may properly check the accounts.

6. State department, being satisfied that at time the charter of Peoples United States Bank was taken out Lewis had received from subscribers and should have had on hand sufficient funds to pay this original stock in full, insists that this be done without delay.

Of the original capital stock of \$1,000,000 Lewis accounted for \$500,000 to State department.

7. Stock must be allotted to those who were subscribers at the time the charter was taken out.

The bank has been under investigation by State bank examiners since April 3.

Mr. Swanger, when seen by a Post-Dispatch reporter at the Southern Hotel to-day, said:

"As the Peoples Bank is chartered under the laws of Missouri, its affairs are subject to the scrutiny of the department of state.

"It is true I have had bank examiners looking into its affairs for nearly 60 days, but just what action will be taken is something I can not discuss at this time.

"It is the mission of my department to protect in so far as lies in our power the stockholders of all State banks. This I am trying to do in the case of the Peoples United States Bank. Our sole aim is to enforce such regulations as will safeguard the rights of the Peoples stockholders. Beyond that our department has no interest in the case one way or the other."

POSTAL INSPECTOR FULTON IS SILENT.

R. M. Fulton, post-office inspector in charge at St. Louis, seen by a Post-Dispatch reporter Wednesday afternoon, said:

"Regarding any investigation on the part of post-office inspectors of the Peoples United States Bank, or of the affairs of said bank, I am not in position at this time to make any statement, either affirming or denying."

D. P. Dyer, United States district attorney, said:

"This matter has never been referred to me in any form and I know nothing about it. Of course, knowing nothing, I can make no statement."

The report forwarded to Washington by the post-office inspectors said that the case would be referred to District Attorney Dyer for presentation to the Federal grand jury as soon as practicable.

DETAILS OF REPORT ASKING FRAUD ORDER.

WASHINGTON, May 31.

Assistant Attorney General Goodwin has under consideration a voluminous report from the Post Office Department which recommends that a fraud order be issued against the Peoples United States Bank, of St. Louis, prohibiting it from using the mails. The bank was organized by Edward G. Lewis, who is its president, and who is also president of the Woman's Magazine, of St. Louis. No action has yet been taken by the attorney general's office.

The report was received from Chief Post Office Inspector W. J. Vickery, to whom it was sent by Inspectors Fulton, Sullivan, and Stice, of St. Louis, the inspectors who made the investigation of the bank. The report also states that the case will be laid before United States District Attorney Dyer at St. Louis for presentation to the Federal grand jury.

The inspectors say in their reports that some of the other companies organized by Lewis were in debt, hence the necessity for organizing a bank in order to have ready cash from which to supply the needs of these companies.

The bank has been under investigation by R. M. Fulton, post-office inspector in charge at St. Louis, and Inspectors W. T. Sullivan and J. L. Stice since March 1. While this investigation has not yet been finally closed, the inspectors submitted to the Assistant Attorney General for the Post Office Department here a report, on which they asked that Lewis be cited to appear and show cause why a fraud order should not be issued against him.

As reasons for the issuance of a fraud order, the inspectors allege that Lewis "obtained money and subscriptions for stock in the bank by exaggerations and misrepresentations of the security, safety, and profits to accrue to the subscribers of stock, promising to put in his own funds, dollar for dollar, for every subscriber, and then organized the bank so that Edward G. Lewis could and would control it without the voice of the stockholders, and use the funds subscribed, or a large portion of them, for his own purposes and benefits."

It is alleged that Lewis drew salary from the bank as its President from July, 1904, while the bank was not legally in existence, until November 14, 1904, and that he had no right to draw salary until that time.

That he and concerns in which he is financially interested had, March 15 last, when the capital stock paid in was \$500,000, borrowed \$411,203.18, which, it is alleged, is in violation of the State banking law.

That Lewis's representations that the capital stock of the bank would be worth several times par the day the bank opened were untrue.

That it is not true that the profits of this bank are so much greater and the expense of operating so much less than other banks, as Lewis represented.

That Lewis represented that the profits from a certain certified-check system alone would amount to nearly a quarter of a million dollars a year, and that this is not true.

That it is not true that Lewis subscribed for and took dollar for dollar of capital stock with other subscribers, or that he took a million dollars in stock in his own name, or that he paid in out of his own funds for capital stock, or that his capital stock would go to increase the reserve of the bank and in consequence enhance the value of the stock of other subscribers, as it is alleged he represented.

OFFICERS BORROWED FROM BANK.

That it is not true that the officers and directors of the bank are prevented from loaning or borrowing the funds of the bank, and that they had loaned and borrowed \$411,203.18 up to March 15, 1905, when the capital stock amounted to only \$500,000.

That it is not true that the capital stock of the bank was intended to be invested in Government or State bonds or gilt-edged securities.

That it is not true that the loans of the bank were passed on or guaranteed by any other bank.

That it is not true that the Woman's Magazine and Woman's Farm Journal were built up on a capital of \$1.25, and that it is also not true that the Woman's Magazine building was built at a cost of a half million dollars "without mortgage, lien, or loan," and the advertisement of the success of those two papers as evidence that the bank would prove successful, is misleading and a misrepresentation of existing facts.

That it is not true that the board of directors is composed of men selected because they have demonstrated abilities, built up large enterprises, and amassed comfortable fortunes; that the board of directors was not elected according to the laws of Missouri, but was and is the sole selection of E. G. Lewis out of his employees of the Lewis Publishing Co.

That the voice of the stockholder is silenced and has no part in the conduct, control, or management of the bank.

That it is not true that the great profits which Lewis described in literature sent through the mails would accrue to the bank, or could possibly accrue, and that Lewis knew this to be a fact.

Regarding the allegation that Lewis and concerns in which he is financially interested borrowed money from the bank in excess of the amount permitted by law, it is alleged that his books show loans amounting to \$411,203.18, among which are the following:

On note of Lewis Publishing Co.....	\$87, 500
On stock of Lewis Publishing Co.....	23, 000
On stock of University Heights & Realty Co.....	12, 770
On note of University Heights & Realty Co.....	57, 450

On note of Edmund Powers (Fiber Stopper Co.)-----	\$2,500
On bonds of California Vineyard Co.-----	7,000
March 15, on E. G. Lewis's unsecured note.-----	50,000
On account promotion of bank-----	146,375
On note of Lewis Publishing Co.-----	5,500
On note of Clawson & McCarthy-----	500
On note of Sterling Remedy Co.-----	2,000

At the time this money was borrowed, it is alleged, the paid-in capital stock of the bank was only \$500,000, and that the amount alleged to have been borrowed—\$411,203.18—is greatly in excess of the State law, which provides:

"No officer or director of the bank shall be permitted to borrow of the bank in excess of 10 per cent of the capital and surplus without the consent of a majority of the other directors being first obtained at a regular meeting and made a matter of record, * * * and"

"No bank shall lend its money to any individual or company, directly or indirectly, or permit them to become indebted or liable to it to an amount exceeding 25 per cent of its capital stock actually paid in."

The note for \$146,375.63, for expenses of promotion and advertising, is signed by E. G. Lewis, E. W. Thompson, F. J. Cabot, A. P. Coakley, and G. A. Arbogast, the five directors of the Peoples United States Bank.

That Lewis stated the bank stock would be worth several times par the day the bank opened is seen in the May, 1904, edition of the Woman's Magazine, in which was stated:

"Subscriptions to stock have poured in by tens of thousands of dollars.
* * * Our bank will open with over 100,000 stockholders and depositors.
* * * Stock will advance to several times par the day the charter is granted. * * *"

Regarding the profits to accrue from the certified-check system Lewis says in the July, 1904, issue of the Woman's Magazine, in an article covering two pages:

"* * * From certified-check system the earnings will be nearly a quarter of a million dollars per year without having to pay any interest on it."

Regarding his agreement to put dollar for dollar with the other subscribers to the stock, Lewis said in the May, 1904, issue of the Woman's Magazine:

"I ask you to join with from \$1 to \$500. I have pledged to put up dollar for dollar with you to the utmost limits of my private fortune. I would rather be president of the woman's magazine and the postal bank than President of the United States."

Regarding his subscriptions to stock and his profits going into the reserve fund, Lewis stated in the July, 1904, Woman's Magazine:

"I am arranging to turn nearly everything I have into cash, outside of my stockholding in my present publishing business, and expect to subscribe for at least \$1,000,000 of the stock of our bank. I must pay cash, exactly the same as you do, for my stock, as there is no 'promoter's' stock in this bank, but when it opens its doors there will be a dollar in cash in the vaults for every dollar of capital stock, and every dollar of my profit will go to increase the reserve in the bank each year."

As to the privilege of officers and directors borrowing from the bank, Lewis said in the July, 1904, Woman's Magazine:

SAID OFFICERS COULDN'T BORROW.

"Our bank will not be a private bank, but a State or national bank. Its stockholders can not be assessed or become liable. The officers and directors can not borrow or use a dollar of its funds. I, who am arranging my personal affairs so as to take and pay for a million dollars of the stock myself and who will be its president, could not lend myself a single dollar of the bank's funds. In addition to this I am pledging my own great stockholdings to you for your additional safety and profit. Every dollar that my stock earns goes into the reserve of the bank, adding to the value of your stock."

Regarding the investment of the capital stock of the bank in Government or State bonds, or gilt-edged securities, Lewis said on page 11 of Banking by Mail:

"The entire capital of this bank will be invested in Government bonds or other gilt-edged securities."

Regarding his plan of having other banks pass upon and guarantee all loans, Lewis said in the September, 1904, Woman's Magazine:

have divided into two parts of a half million dollars each. One part I shall allot and sell at par to those of you who could not subscribe for it and pay for it all at once. * * * The other half million dollars I shall hold to be placed exclusively with the officers of other banks and with strong men who can be a source of assistance, counsel, and mutual benefit to our bank."

STATEMENTS ABOUT WOMAN'S MAGAZINE.

Relative to the Woman's Magazine, Lewis's pet publication, the Post Office inspectors say in their report on the Lewis Bank:

"In advertising and exploiting the Peoples United States Bank, Lewis kept prominently before the public, and particularly the readers of the Woman's Magazine and the Woman's Farm Journal, the building up of these two publications from a capital of \$1.25 in the year 1900 and the enormous success which the Lewis Publishing Co. had attained in these four years arising chiefly from the inventive genius, the organizing ability, tact, and shrewdness of Lewis.

"He claimed that the Lewis Publishing Co. is now earning a profit of from one-quarter of a million dollars to one-third of a million dollars a year, and had erected the 'great office building of the Woman's Magazine and Woman's Farm Journal for cash, without mortgage or loan, at a cost of over a half million dollars, in five years from a start of \$1.25, showing what can be done if enough people combine to do it, even at 10 cents per year each.' We invite attention to this statement of E. G. Lewis in the June number of the Woman's Magazine:

"The great publishing house owned by the Woman's Magazine was built without mortgage or loan, and about it are 85 acres of the finest residence property in St. Louis, which we have laid out into a beautiful private residence park, where the officers of the company are building their own homes, and where in one part many beautiful little homes will be built by the company for its employees, to be paid for in small monthly payments.' Also in the same column: 'The finest and largest publishing plant in the world has just been completed at a cost of over \$600,000, and nearly 500 people are employed by these two papers in their production, which means that about 300 families earn their daily bread and butter in producing these papers. Fifteen carloads of paper and 4 tons (8,000 pounds) of printing ink are consumed in producing a single issue of the Woman's Magazine.'

STATEMENT OF PUBLISHING COMPANY.

"Mr. Lewis furnished us the following statement of the Lewis Publishing Co. for March 14, 1905:

Assets:

The Woman's Magazine	\$1, 000, 000. 00
The Woman's Farm Journal	250, 000. 00
Cash	16, 797. 50
Accounts receivable	222, 477. 25
Bills	3, 270. 87
Stocks and bonds account	1, 000. 00
Building	405, 328. 20
Machinery	191, 937. 25
Furniture and fixtures	28, 159. 19
Real estate	52, 167. 00
Branch post-office equipment	1, 256. 00
Railroad trackage	6, 035. 10
Rolling stock	12, 301. 08
Composing room	1, 903. 38
Improvement account	8, 693. 56
	<hr/>
	2, 201, 326. 45

Liabilities:

Capital stock	1, 200, 000. 00
Due banks on time loans	115, 000. 00
Notes payable for supplies	97, 000. 00
Special loans, account of construction, payable in three years, at 6 per cent	381, 592. 71

Surplus

1, 793, 592. 71
407, 733. 74

2, 201, 326. 45

"Analysis of the assets given above shows that \$1,250,000 of same consist of the franchise, or privilege of mailing the publications at second-class mail matter at the rate of 1 cent per pound. This franchise only one of the publications possesses. The Woman's Magazine has been mailed at the pound rate on a temporary permit of the postmaster at St. Louis [this was Postmaster Baumhoff], on an application filed in 1899 (three years before the Woman's Magazine had existence) for the same privilege for the Winner Magazine, made by the Mail Order Publishing Co. Hence these are improper assets, and do not exist in fact. Deduct this amount from the assets and, without questioning the remaining assets, the total assets would be \$951,326.45. Pay off the liabilities due banks, notes for supplies and special loans, aggregating \$593,592.71, out of the assets, and there would remain only \$357,733.74, and the surplus would have been absorbed and the capital stock impaired.

"This analysis shows that the Lewis Publishing Co. did not build its office building with 'cash and without mortgage or loan,' and clearly indicates that its earning power is far below 'a quarter to a third of a million dollars per annum.'

"The fact is the Lewis Publishing Co. has been doing business on credit, and so has every other company with which E. G. Lewis has been associated. The only companies with which he has been connected which have been able to meet expenses, independent of assistance, are the World's Fair Contest Co. (a lottery, pure and simple) and the Lewis Publishing Co., during the year 1904, and both these companies did business on borrowed money.

"Lewis states that he was enabled to build up the Lewis Publishing Co. from a capital of \$1.25 to its present earning power of from a quarter to one-third of a million dollars a year by borrowing at needed times approximately two millions of dollars. All the other companies were in debt in 1904 and are in debt to-day. Hence the necessity for organizing the Peoples United States Bank in order to have ready cash from which to supply the needs of the struggling companies.

"On April 8, 1905, we requested Mr. Lewis to furnish us an itemized list of receipts and expenditures of the Lewis Publishing Co. for the first quarter of 1905. He directed a bookkeeper to furnish such statement, and he furnished a statement for the entire quarter without separating the months. The totals were as follows:

January, February, March, 1905.

	Earnings.	Expenses.
Receipts from advertising.....	\$206,202.03	\$141,903.27
Receipts from subscriptions.....	21,567.63	
Receipts from building rent.....	750.00	
Total.....	228,519.66	141,903.27
Net earnings.....	86,616.39	

We then requested that this statement embrace receipts and expenses for each month separately, and he furnished the following:

	Earnings.	Expenses.
January receipts from advertising.....	\$72,775.07	\$38,340.23
January receipts from subscriptions.....	6,928.15	
January receipts from building rent.....	250.00	
January receipts from interest.....	56.85	
	80,010.07	38,340.23
February receipts from advertising.....	72,860.85	48,549.97
February receipts from subscriptions.....	6,849.87	
February receipts from building rent.....	250.00	
	79,960.85	48,549.97
March receipts from advertising.....	60,565.98	55,033.92
March receipts from subscriptions.....	7,789.61	
March receipts from building rent.....	250.00	
	68,605.59	55,033.92
The total reported for quarter.....	228,519.66	141,903.27
The total reported by months.....	228,576.51	142,924.12
Difference in reports.....	56.85	1,020.85

LEWIS'S VAST EXPLOITS OF LAST 10 YEARS.

According to information compiled by post-office inspectors regarding Lewis for the past 10 years, it is stated by them that in August, 1895, Lewis was in Nashville, Tenn., selling a tablet composed of saltpeter and insect powder, a mosquito preventive. It was said that he was badly in debt and that a Howard E. Nichols loaned him \$150 and agreed to exploit the business in Memphis. Having some success, Lewis organized a company, but shortly afterwards the business failed and was taken in charge by the sheriff.

A preparation for perspiring feet, and a tooth powder started by Lewis and Nichols, who had been associated with him in Tennessee and in the Diamond Candy Co., enjoyed good sales one summer, but after that died out.

The Progressive Watch Co. was started in October, 1898, with a plan to sell watches on an endless-chain system, but the business was not profitable. About April 1, 1899, the Post Office Department denied this company the use of the mails, issuing a fraud order.

The Winner Magazine was then started. The Progressive Watch Co., then known as the Mail Order Publishing Co., was merged into the Winner Magazine. Soon the National Installment Co. was started with a scheme to sell jewelry on the installment plan. The plan did not pay and was dropped.

The Development & Investment Co. followed this. This company, it is alleged, was designed as a holding company for the various other companies operated by Lewis or to be later started by him. Some money was made in this, the profits going to pay the debts of the Winner Magazine.

In 1901 Lewis obtained \$5,000 from a St. Louis business man, a part of which was used in making a first payment on the purchase price of the Woman's Farm Journal and the remainder in paying the debts of the Winner Magazine. The latter was owned by F. J. Cabot, who is now interested in the Lewis magazines and in the bank. The remainder of the purchase price was paid Cabot in stock of the Development & Investment Co.

Nichols and Lewis separated May 12, 1902. Since that time Lewis has organized and incorporated the University Heights Realty Co., Allen Steam Trap Co., Lewis Publishing Co., United States Fiber Stopper Co., California Vineyards Co., Camp Lewis, Bachelor Pneumatic Tube Co., the World's Fair Contest Co., and the Peoples United States Bank. He has increased the capital stock of the American Coin Controller Co., the Development & Investment Co., and the Peoples United States Bank.

Mr. REDFIELD. Why did you not discharge these men, these inspectors?

Mr. MADDEN. I didn't have anything to do with it, sir. It was done under the Postmaster General's orders. I stated in my introduction that the Postmaster General had taken this case into his own hands and out of the bureau having lawful jurisdiction, and he managed it from the hour he came in until the hour he went out.

Mr. REDFIELD. Then it was Postmaster General Cortelyou to whom you allude?

Mr. MADDEN. Yes, sir.

Mr. REDFIELD. What was the error that Mr. Lewis said this man admitted?

Mr. MADDEN. As I recall that, it was an error in the figures of some kind. I am not clear upon that matter. It was an error of some kind in the figures.

Mr. REDFIELD. Is there any question in your mind of the accuracy of the statement that there was about \$85,000 received as against an outgo of \$700,000 on publications account?

Mr. MADDEN. Later on I shall submit an affidavit from the president of the company as to the income, and so on.

Mr. REDFIELD. I wondered if the error was not there. That would seem to be the place it would likely be.

Mr. MADDEN. I do not remember what it was. I submit here a copy of the Post-Dispatch of May 31, 1905, containing the article marked

as Exhibit No. 7. I ask you gentlemen to take it and look at that. There is an article that runs over into several pages. Here are the very tabulations from the inspector's report [indicating].

Mr. REDFIELD. What is the date of that?

Mr. MADDEN. May 31, 1905, the very day that the "concerted action" telegram was received.

On July 8, the Third Assistant, with the assistance of his special assistant attorney provided for his office, rendered an elaborate report in detail on the magazines and their rights to continue in the mails. The disclosures at the hearing of the company June 17 were covered. I submit herewith, marked "Exhibit No. 8," a compared copy of that report.

This report showed that it was made only because of the unusual circumstances of the case and the apparent exceptional interest of the Postmaster General.

In regular practice, the Postmaster General holds aloof from such matters, and is free and open-minded to come into them if there be an appeal to him. The Third Assistant was dealing with similar questions on an average from one two three hundred a day. All decisions were over his own signature, and passed on to the postmaster at the post office where the matter was mailed with instructions to advise the party in interest of the decision which had been made. Therefore, the report of July 8 to the Postmaster General was most unusual, but it dealt with the subject very thoroughly, and again emphasized the irregular course of procedure which had been followed.

I read the following extracts from the report of July 8—

Mr. REDFIELD. Just a moment. Is the committee to understand that your office, although in charge of this branch of the post-office work, did not give the instructions under which either Mr. Fulton or his subordinates acted?

Mr. MADDEN. They were acting under instructions of the Postmaster General.

Mr. REDFIELD. Then this proceeding up to the time at which the report was received from Mr. Fulton was irregular, so far as the procedure went?

Mr. MADDEN. Yes, sir.

Mr. REDFIELD. Were you aware at that time that this was going on?

Mr. MADDEN. Yes. I have already stated that I called the Postmaster General's attention to the irregularity.

Mr. REDFIELD. I mean were you aware at the time the investigation was going on that it was happening?

Mr. MADDEN. Yes; we heard of it, but did not know what to make of it. But the Postmaster General is presumed to know his business, and manifestly a subordinate can not step in and ask him to account for his actions.

Mr. REDFIELD. Then you knew that the inquiry was proceeding, and proceeding in what you knew to be an irregular way?

Mr. MADDEN. Yes.

Mr. REDFIELD. But you felt yourself estopped from inquiring into it?

Mr. MADDEN. Yes.

Mr. McCoy. Have you ever known a similar case where the Postmaster General followed the same line?

Mr. MADDEN. There was never any while I was in office, and the Postmasters General were very particular not to interfere, because I was conducting that reform and it was essential that that reform be conducted with such consideration for the morals of the situation and the justice of it as to leave no rightful criticism upon the department, and therefore they felt that it required some person who was a student of the subject and who had devoted himself to it, and that he be left alone to work it out. There were only about two appeals in the entire time from the decision to the Postmaster General.

Mr. REDFIELD. Had you been advised at any time by the Postmaster General that this matter was taken out of your hands by him?

Mr. MADDEN. No, sir.

Mr. REDFIELD. Had there been any previous record of the kind in the office on this case?

Mr. MADDEN. None at all. I will now read extracts from my report of July 8:

Before proceeding further it is especially important to understand that the question of fraud and the question of postage rates have no relation to each other. Each must be decided independently of the other upon the facts respectively relevant.

The question of fraud order relates solely to the fraudulent intent of an individual in respect of his dealings with the public through the mails, and it is wholly immaterial what class of mail matter he employs to accomplish his purpose. It may be by letters, circulars, or advertisements in daily papers, or the monthly magazines. The substantial effect of such an order is to prevent the delivery of any mail to the person involved. It does not prevent him from continuing to send matter in the mails.

The question whether a periodical is or is not entitled to the second class, on the contrary, is one depending simply upon the compliance of the publication itself with certain tests or standards established by law. When printed matter—as all publications must be—is determined not to be entitled to the second-class rates, the effect of such determination is merely to relegate it to the third class. Denial of the second-class rates does not exclude a publication from the mails and has no effect upon the publisher's right to receive any mail matter. It affects only the right of the publication to be accepted and forwarded as matter of that class.

In determining the right to a particular postage rate nothing is material except the facts tending to show compliance with the standards of classification. The conduct of the sender in other particulars, however important as throwing light upon his right to receive letters in the mails, is of no importance in determining whether his outgoing mail matter is to be classified as belonging to one class or another. In determining whether a publication is designed primarily for advertising purposes it is immaterial whether the subject advertised is itself a scheme to defraud, or whether it is legitimate and honorable. If the design to advertise is primary, no matter how innocent or legitimate the thing or things advertised, the publication is debarred; while if the design to advertise is not primary, no matter how fraudulent or illegitimate the thing or things advertised, the publication is not debarred. It is therefore of no relevance upon the question of classification that these publications are charged to be "aids in a scheme to defraud."

These cases, therefore, so far as my jurisdiction extends, must be decided upon the evidence indicating the primary design of the publications themselves.

Here I omit several pages and read the following, which begins on page 6 of the report:

This reasoning (that in the inspectors' report) would exclude practically every daily newspaper and every magazine from the second class. There is hardly a newspaper or periodical of the higher class in which the annual cost of production is not greatly in excess of the revenue from subscriptions alone. The magnificent service of the modern newspaper and the quality of the popular magazine are based fundamentally on the fact that their advertising revenue enables them to do for the subscriber what the subscriber's money alone would not enable them to do.

As an illustration, apply the rule invoked by the inspectors in these cases to the Evening Star of this city. Accepting the published statements with regard to circulation as well as the prices charged for advertising, a rough estimate shows that the receipts from the sales of copies of the paper for one year are approximately \$197,000, while the receipts from advertising patronage are approximately \$630,000. If the Woman's Magazine be held to be primarily designed for advertising purposes because of the disproportion between the advertising and the subscription revenue, by parity of reasoning the Evening Star must be similarly dealt with.

A critical examination of the issues of the Women's Magazine and Woman's Farm Journal shows that the space devoted to advertising as compared with the space devoted to reading matter is not greater on the average than that in the recognized periodicals. For example, the Woman's Magazine for June, 1905, contains 24 pages, of which 13 are reading matter and 11 are advertising. The same magazine for July, 1905, contains 20 pages, of which 13½ are reading matter and 6½ are advertising. Harper's Magazine for June, 1905, contains 327 pages, of which 162 are reading matter and 165 are advertising. The Woman's Farm Journal for March, 1905, contains 32 pages, of which 12 are reading matter and 20 are advertising. Scribner's for the same month contains 277 pages, of which 133 are reading matter and 144 are advertising. The Woman's Farm Journal for April, 1905, contains 32 pages, of which 15 are reading matter and 17 are advertising. McClure's Magazine for May, 1905, contains 289 pages, of which 112 are reading matter and 177 are advertising.

It will be seen from the foregoing comparison that the total amount of advertising carried in the publications in question is not, on the whole, greater in proportion than that carried by Harper's, McClure's, and Scribner's. Compare the June number (1905) of the Woman's Magazine with the Ladies' Home Journal for the same month. The former contains 43 columns, or 7,441 agate lines, of advertising as against 95 columns, or 19,080 agate lines, in the latter. The Ladies' Home Journal being approximately twice the size of the Woman's Magazine, there is no substantial difference in the relative amount of advertising in the two.

With respect to the text being a mere cover for the advertising, it would appear that the reading matter, although not of the highest literary merit, is prepared specially for these publications, and the publisher insists that it is edited with care. It consists chiefly of fiction in the form of short stories which, so far as is known, are not clipped or reprinted; special articles similar to those found in Sunday newspapers; pages devoted to fancywork, fashions, and household hints, recipes, etc. In the absence of any evidence indicating that the subscribers do not subscribe for the paper on its merits, no test of the subscription list for that purpose having been instituted, it is practically impossible to say that the reading matter is intended merely as a mask for the advertising.

That the Woman's Magazine is a leading medium for mail-order advertising is shown by the fact that in the following list composed by the Rowell Advertising Agency and purporting to name the six best mail-order publications in the country, it is found third: Everybody's Magazine, Ladies' Home Journal, Woman's Magazine, Saturday Evening Post, McClure's Magazine, Collier's Weekly. (See Printer's Ink, Feb. 1, 1905, p. 34.)

I pass now to pages 12 and 13 and read the conclusions of the Third Assistant Postmaster General:

Upon the foregoing state of facts alone, without an analysis of the circulation and without evidence as to whether the claimed list of subscribers is, as a matter of fact, legitimate in its entirety as required by law and the other collateral aids in determining what is the primary design of the publications, I do not feel warranted in holding that the Woman's Magazine or the Woman's Farm Journal, as distinguished from publications of the same general class, is primarily designed for advertising purposes in general or to specially advertise the other businesses of the publishing company.

Had the facts with regard to the matters just mentioned been developed by proper inquiry, it is possible that, taken in connection with what I have already recited as to the advertising features, they might have caused a different conclusion.

If you direct it, an investigation along the usual lines pursued by this bureau can be carried forward in respect of these publications; but in my judgment

such a course can best be followed later, when the determination of the department in the cases of some other mail-order publications, which are far clearer and more flagrant and which are now before the courts, has received judicial approval.

In view, then, of the fact that these are not clear cases and that the reform, if it is to be carried on, must be carried on by establishing our contentions in cases where they are palpably correct, I recommend that these cases be closed by a letter from the Third Assistant Postmaster General to the postmaster at St. Louis.

The report contains the statement that at the hearing on June 17 the representatives of the company stated that if the space in their publications devoted to advertising in general seemed to be too great, it would be reduced to meet any rule which the department would promulgate; or that if the advertising space devoted to other businesses in which the company was concerned seemed to be too great it would be promptly reduced, or eliminated altogether, according to any rule of the department; or that if the subscription rate of the magazines appeared to be too low it would immediately upon notice raise it to any acceptable figure.

The company claimed that no advertising was accepted for its publications without careful scrutiny as to its moral tendency, and that the company guaranteed to make good the actual loss any subscriber sustained from being swindled by any advertiser in the magazines.

Just before closing, the report states—I quote literally:

It is therefore important that the Third Assistant Postmaster General should reach a judgment only after careful consideration of the evidence which experience has shown to be relevant and material. Especially should he do so without haste or bias and uninfluenced by any preconceived notion.

The report closes with the statement that no reason was found to disturb the right of the company to mail its two magazines at second-class rates, and that both the report and the evidence upon which it was based had been reviewed by the special assistant attorney for this class of cases, and that he concurred in the findings.

The Postmaster General's attention had now been called, in the most forceful way, to the irregularities in handling the case. Without putting it in so many words, he was told that his procedure was unlawful and that if anything were to be done concerning the two publications of the company it should be done in the regular order, "along the usual lines." The unusual lines of the procedure so far were pointed out. The record did not look well, and the "concerted-action" program had failed.

Now comes the Postmaster General with a letter of July 12, a reply to the July 8 report. I quote it in its entirety because of its importance:

Memorandum for the Third Assistant Postmaster General.

JULY 12, 1905.

Case: Woman's Magazine (C. D. 26575) and Woman's Farm Journal (C. D. No. 58208), published at St. Louis, Mo., by the Lewis Publishing Co.

Please have investigation made along the usual lines pursued by your bureau to determine whether the Woman's Magazine and the Woman's Farm Journal are entitled to transmission at second-class rates. It is desired that you will have this investigation completed as promptly as may be consistent with your general practice and will bring the results to my attention.

Until such investigation shall have been completed it does not appear necessary to give the postmaster at St. Louis the instruction which you suggest in

memorandum of the 8th instant, as continuance of the present practice will accomplish the same result.

GEO. B. CORTELYOU,

Postmaster General.

So, then, from now on the case was to be handled "along the usual lines pursued by your bureau"—that is to say, the Third Assistant's bureau. But why not inform the postmaster at St. Louis and through him the publishing company? That was the practice—the "usual lines." The company had been cited to show cause why its magazines should not be ruled out of the second class, and had been put to considerable expense to defend its rights. The report of July 8 on the hearing contained a copy of the letter which the Third Assistant had prepared to send to the local postmaster. It provided that he should, in the regular way, inform the publishing company of the decision which had been made on the hearing of June 17, 1905. But by direct order, contained in this July 12 letter, the Postmaster General proposed to leave the company in ignorance. That circumstance, coupled with what had gone before, was bound to raise suspicion of an ulterior purpose.

MR. AUSTIN. Did you object at that time to the letter of instruction from the Postmaster General?

MR. MADDEN. Object to not sending it?

MR. AUSTIN. His instructions to you.

MR. MADDEN. Not to send it? I do not recall anything. It may be that I may have done so, but I may not. I do not recall that.

MR. AUSTIN. What I wanted to get at in my mind was whether at that time you thought it was improper, as you do now.

MR. MADDEN. I think we will have people on the stand that will settle all that matter.

MR. AUSTIN. But I prefer you telling me.

MR. MADDEN. I do not recall the particular circumstance. I did enter a general protest as to his conduct.

MR. AUSTIN. I mean at this particular time.

MR. MADDEN. I do not remember as to this particular time.

MR. MCCOY. You made certain recommendations which he did not adopt?

MR. MADDEN. He did not adopt? He adopted them "to handle it along the usual lines," to advise the postmaster or the general public. He kept them in the dark.

MR. MCCOY. That would have been the usual line?

MR. MADDEN. Yes; to advise them.

MR. AUSTIN. It was usual, except to that extent?

MR. MADDEN. What was usual?

MR. AUSTIN. That it was usual to notify the company—

MR. MADDEN. Yes. It was customary at that time, and I think it is to-day, that when a company is dealing with the Post Office Department he does it through the postmaster. Is that right, Mr. Britt?

MR. BRITT. Yes.

MR. AUSTIN. Does he necessarily have to forward it through the local postmaster?

MR. MADDEN. No; not necessarily.

MR. AUSTIN. He can do it direct?

MR. MADDEN. He can forward it direct; yes. It was alleged, as I have said, that there were many abuses in what was known as the mail-order class of publications.

Mr. AUSTIN. Was there investigation into other publications at this particular time, under the direction of Mr. Cortelyou?

Mr. MADDEN. No, sir.

Mr. AUSTIN. Was this publication alone singled out of the mail-order publications and no other publication?

Mr. MADDEN. Yes, sir.

The CHAIRMAN. That is already in the record.

Mr. MADDEN. And the reason was that we had been enjoined in 19 instances, and the decision was made—as long as we could not touch 19 which were supposed to be the most flagrant abuses of the second-class mailing privilege—that we could not in fairness touch the others. Among them were Gov. Hill's publications, 5 of them. He had appeared at the department before this. And there were the Gannett publications, 5 of them. They were published in Augusta, Me. There were some others at Waterville, Me. They had been cited because they had been supposed to be abuses. Gov. Hill did not join in the injunction proceedings, but the rest did; and we were served, I think, with 19 injunctions at one time, and the result was we said we will suspend action until we test these cases.

Mr. BRITT. I will ask you if it is not a fact that the understanding between the Postmaster General and yourself, to the effect that there should be a suspension of inquiry in certain cases, did not stipulate that there should be no suspension or failure to inquire into cases where serious violations were apparent?

Mr. MADDEN. That is correct. The whole question then hinged upon whether this was a serious violation. If it was a serious violation it still was the duty of the Third Assistant to act in the matter. How could the Postmaster General, who never handled another case, know whether it was a serious violation or not? What experience had he in this case when he came into this case 10 days after he came into office? How was he to know whether that was a serious violation?

Mr. AUSTIN. Was there a disagreement between the Postmaster General and yourself at the beginning on this case?

Mr. MADDEN. Yes; we got to the point where we exchanged nothing but written communications, which has proved very fortunate.

Mr. McCoy. How did he know that it was serious?

Mr. MADDEN. He did not know. He could not know.

Mr. McCoy. What information was he acting on in taking the matter up in that way?

Mr. MADDEN. I can best answer that by going back and saying that I have charged here that there was a conspiracy and it did not matter whether these publications were as clean as a hound's tooth, they were going to destroy them. That was in the cards, and it will be shown before I am through.

Mr. BRITT. Mr. Madden, I ask if it is not a fact that information concerning these delinquencies and violations in the case of second-class mail publications does not often come to the Postmaster General, independent of the Third Assistant's bureau, through reports made by competitive newspapers or by public officials or others, and in that way may he not have knowledge of violations of which the Third Assistant may, at least for the time being, know nothing?

Mr. MADDEN. I answer, unhesitatingly, no; because while a competing publisher might consider another publication an abuse, the

third assistant, who was in daily practice and in daily experience of deciding what was abuse and what was not, was the only man and his office the only place where justice could be done. No Postmaster General could come in and pick out a newspaper or magazine and conclude that that was an abuse and a grievous one without comparison with others.

Mr. BRITT. But I am asking if he might not and does not often receive information on such matters?

Mr. MADDEN. If he does he transmits it to the Third Assistant precisely as they transmitted that report of May 19, 1905, to the Third Assistant.

Mr. BRITT. Were there not a great many communications of this kind written to the Postmaster General and by him passed to your bureau?

Mr. MADDEN. There were a great many communications between us; yes.

Mr. BRITT. I mean by others, and forwarded by him.

Mr. MADDEN. There may have been, but they were not material matters.

Mr. McCoy. What is the custom of the department about distributing mail, and what does that have to do with official business?

Mr. MADDEN. There was in my time what was called—Mr. Hill was at the head of it—the mails and files division. There were five men in that division, including the chief. His duty was to open the mail matter and distribute it to the various divisions of the bureau according to the subject matter of the letters. If anything came to the First, Third, or Second Assistant, or Fourth Assistant, or the Postmaster General, concerning the jurisdiction of the Third Assistant, that would be sent to the Third Assistant in the usual way.

Mr. McCoy. My point was this: Was there somebody there who sifted out the letters and saw that they got directly into the hands of the proper official without going through the Postmaster General?

Mr. MADDEN. Oh, yes.

Mr. AUSTIN. That is true, unless the letter be marked personal?

Mr. McCoy. So if any such complaint as Mr. Britt speaks of should have come into the post office, the regular course of business would be that they never got into the hands of the Postmaster General?

Mr. MADDEN. That is true, if they were marked "personal," and even then he would send them to the Third Assistant. He sits as sort of a supreme court to pass upon the righteousness of the acts of his subordinates. He hears appeals from his several assistants, and he is presumed not to meddle with the cases up to that point for the reason that his mind should be open to determine the righteousness of his assistants' acts. When he jumps into a case, as he did in this, and assumes to be prosecutor and judge and everything else, the case is entirely out of order.

Mr. AUSTIN. Suppose I was Postmaster General and you were Third Assistant Postmaster General and I disagreed with you about the Lewis case, disagreed entirely with your view of it, would it not be my duty to take it out of your hands?

Mr. MADDEN. It would be your duty to hear an appeal or change its jurisdiction, or it would be your duty to see that I was removed

for wrongdoing, but you could not take it into your own hands as long as that regulation stands.

Mr. AUSTIN. Would I not say "We do not agree on this and I will handle this myself?" That could be done, could it not?

Mr. MADDEN. It could be done, but not lawfully.

The CHAIRMAN. The regulation in regard to that is in the record?

Mr. MADDEN. Yes. He could take it away only by violating the regulation or by removing the Third Assistant and getting somebody else who would do what he wanted to. He could not take it into his own hands under the rule. He must take that case up in the same manner under the rules that other cases are handled. The trouble in this case they singled out this publisher to do these things, regardless of practice. They were out to get him. It was expected that my job was worth too much for me to dare not to do what I understood the Postmaster General wanted done. That was the situation and that is where we disputed.

Mr. AUSTIN. Does the record of the department show that you disagreed with him on this from its inception?

Mr. MADDEN. Yes. We will get to that.

Mr. AUSTIN. You served under Mr. Cortelyou?

Mr. MADDEN. Under five Postmasters General.

Mr. AUSTIN. Please name them.

Mr. MADDEN. Charles Emory Smith, Henry C. Payne, Robert J. Wynne, George B. Cortelyou, George von L. Meyer.

Mr. McCoy. Did the Postmaster General, Mr. Cortelyou, ever tell you that he had received any communications in regard to this matter which he had examined personally?

Mr. MADDEN. Never, sir. When I attempted to talk to him in the beginning I thought honestly that he was just mistaken, in the beginning, and that he would come around all right. That letter of July 12 turns it back to the Third Assistant to be handled along the usual lines. Up to that time I thought he was simply mistaken or had been induced to go into the case by some person and would come around, but every time I would talk to him about it he would change the subject, and therefore it was out of that circumstance that we came to putting everything on record. I think you will find if you can get Mr. Cortelyou on the stand that he never wrote a letter in the case, although there are barrels of them, but that they were written by men who were hustled from St. Louis to write these letters and then hustled back again.

Mr. AUSTIN. I will at the right time make the motion to have Mr. Cortelyou summoned.

Mr. MADDEN. I hope you will.

Mr. AUSTIN. And anybody else who you allege are parties to the conspiracy.

Mr. MADDEN. I think it is very important to have him subpoenaed.

(Thereupon, at 5 o'clock, the committee adjourned until to-morrow, Thursday, July 13, 1911, at 10 o'clock a. m.)

LEWIS PUBLISHING COMPANY

No. 13

HEARINGS

BEFORE THE

**COMMITTEE ON EXPENDITURES IN THE
POST OFFICE DEPARTMENT**

HOUSE OF REPRESENTATIVES

ON

HOUSE RESOLUTION NO. 109

**TO INVESTIGATE THE POST OFFICE
DEPARTMENT**

JULY 13 AND 14, 1911



**WASHINGTON
GOVERNMENT PRINTING OFFICE
1911**

COMMITTEE ON EXPENDITURES IN THE POST OFFICE DEPARTMENT.

HOUSE OF REPRESENTATIVES.

[Committee room, room 293, House Office Building. Telephone 589. Meets on call.]

WILLIAM A. ASHBROOK, Ohio, *Chairman*.

JOSHUA W. ALEXANDER, Missouri.

RICHARD W. AUSTIN, Tennessee.

WILLIAM C. REDFIELD, New York.

C. BASCOM SLEMP, Virginia.

WALTER I. MCCOY, New Jersey.

HORACE M. TOWNER, Iowa.

ERNEST CORNELL, *Clerk*.

LEWIS PUBLISHING CO.

EXHIBIT 8.

[Mentioned on p. 825.]

Memorandum for the Postmaster General.

JULY 8, 1905.

Case: Woman's Magazine (C. D. No. 26575) and Woman's Farm Journal (C. D. No. 58208), published at St. Louis, Mo., by the Lewis Publishing Co. (P. O. inspector's No. 52856-C).

NOTE.—Owing to the manner of proceeding in these cases it is deemed best to submit the whole matter, with findings, views, and recommendations to the Postmaster General for final action.

The publications referred to by way of comparison throughout this memorandum, with the exception of the Evening Star, are those brought into the case by the publisher himself.

I. THE CIRCUMSTANCES UNDER WHICH THE CASES ARISE.

Post-office inspectors William T. Sullivan and J. L. Stice rendered a report on May 17, 1905 to Inspector in Charge Robert M. Fulton, at St. Louis, on the cases of the Woman's Magazine and Woman's Farm Journal, in relation to the right of those publications to transmission in the mails at the second-class rates. This report was examined, approved, and forwarded to the chief post-office inspector by Inspector in Charge Fulton. The report, which is lengthy and also accompanied by a number of exhibits, indicates a very painstaking examination into the features of the business of publishing these periodicals, and I assume that it is accurate as to those matters reported upon. The gravamen of the report is found in the following passages:

"We have given most of our attention to the question as to whether or not these publications are not primarily intended for advertising purposes and whether the subscription rate is not 'nominal' within the meaning of the P. L. and R. of 1902. If the operating expense is \$700,000 per annum and the revenue from subscriptions only \$85,000 per annum, then it is circulated at less than cost, although this is denied by the publisher. We undertake to show that the rate is nominal, because it is furnished at less than cost, and that while it may have a value of 10 cents a year as a literary production, yet it is and has been conducted primarily for advertising purposes and as an aid in a scheme to defraud. The case must therefore be considered on broader grounds than usual because of these complications. 'If the operating expense is \$70,000 per annum and the subscription receipts but \$85,000 per annum, then there can be no question but that the advertising revenue of \$800,000 per annum becomes the principal business,' no matter what the original purpose of the publication was, and according to paragraph 3, section 437 P. L. and R. of 1902, and the construction therein placed on the word 'primarily,' these publications are not entitled to the second class privilege. Section 428 P. L. and R. of 1902 provides that the publication shall not be entered if published for circulation at nominal rates. The construction placed on the word 'nominal' brings these publications within the inhibition of the regulations, and for the reason that the publications could not be circulated at all at the present rate without being primarily intended for advertising purposes.

"Section 437, P. L. and R. of 1902, provides that publications owned and controlled by one or several individuals or business concerns and conducted as auxiliary and essentially for the advancement of the main business or calling of those who control or own them are primarily designed for advertising purposes. 'Primarily' is held to mean principally, not incidentally. We have already shown that the advertising

revenue is nearly 10 times the subscription revenue, hence it follows that the subscription is incidental and nominal and the advertising the principal object." (From pp. 5 and 6 of report.)

* * * * *

"In addition to the evidence already presented it becomes necessary to introduce the connection between the Lewis Publishing Co. and the other business concerns which are owned and controlled by the officers of said company, and which we propose to show have been organized and promoted by E. G. Lewis through the medium of these two publications under consideration, these publications being conducted in fact as auxiliaries to the main business of Lewis, Kramer & Cabot, and therefore primarily designed for advertising purposes." (From p. 6 of report.)

Before proceeding further it is especially important to understand that the question of fraud and the question of postage rates have no relation to each other. Each must be decided independently of the other upon the facts respectively relevant.

The question of fraud order relates solely to the fraudulent intent of an individual in respect of his dealings with the public through the mails, and it is wholly immaterial what class of mail matter he employs to accomplish his purpose. It may be by letters, circulars, or advertisements in daily papers or the monthly magazines. The substantial effect of such an order is to prevent the delivery of any mail to the person involved. It does not prevent him from continuing to send matter in the mails.

The question whether a periodical is or is not entitled to the second class, on the contrary, is one depending simply upon the compliance of the publication itself with certain tests or standards established by law. When printed matter (as all publications must be) is determined not to be entitled to the second-class rates, the effect of such determination is merely to relegate it to the third class. Denial of the second-class rates does not exclude a publication from the mails and has no effect upon the publisher's right to receive any mail matter. It affects only the right of the publication to be accepted and forwarded as matter of that class.

In determining the right to a particular postage rate nothing is material except the facts tending to show compliance with the standards of classification. The conduct of the sender in other particulars, however important as throwing light upon his right to receive letters in the mails, is of no importance in determining whether his outgoing mail matter is to be classified as belonging to one class or another. In determining whether a publication is designed primarily for advertising purposes it is immaterial whether the subject advertised is itself a scheme to defraud, or whether it is legitimate and honorable. If the design to advertise is primary, no matter how innocent or legitimate the thing or things advertised, the publication is debarred; while if the design to advertise is not primary, no matter how fraudulent or illegitimate the thing or things advertised, the publication is not debarred. It is, therefore, of no relevance upon the question of classification that these publications are charged to be "aids in a scheme to defraud."

These cases, therefore, so far as my jurisdiction extends, must be decided upon the evidence indicating the primary design of the publications themselves.

II. THE QUESTIONS TO BE DECIDED.

The questions before me are reduced to an inquiry as to whether the *Woman's Magazine* and *Woman's Farm Journal* are designed primarily for advertising purposes—and this is of a twofold nature—and as to whether the subscription rate at which they are sold to the public is prohibited by law—that is to say:

1. Whether these publications are designed primarily for advertising purposes in general;

2. Whether they are designed primarily for advertising purposes in particular—that is to say, whether they are designed primarily to advertise certain other businesses in which the shareholders are interested;

3. Whether they are circulated at nominal rates.

1. *Advertising purposes in general.*—The *Woman's Magazine* was formerly known as "The Winner." Under the latter name it was admitted to the second-class rates of postage in October, 1899. The title was changed to the *Woman's Magazine* in September, 1902. The publication remained the same. Under the regulations the change of name required a new entry to be granted as a matter of form. At that time the department had been enjoined by the courts from ruling out of the second class a number of publications belonging to the same general class. It was therefore impossible to refuse this entry, but at the same time it was deemed advisable not to grant it in a formal manner. The application was left pending, the publication continuing to be mailed in the same manner as before the change of name.

The *Woman's Farm Journal* was admitted to the second class in December, 1891, and has so continued up to the present time.

Both of these publications belong to what is commonly called the mail-order type—that is to say, they are largely used as advertising media by persons who sell goods by means of orders received through the mails. Publications employed for advertising of this nature do not necessarily constitute publications “designed primarily for advertising purposes.” As a matter of fact, the advertising in the recognized magazines is largely in aid of mail-order businesses of various kinds. *Everybody's Magazine*, *Ladies' Home Journal*, *Collier's Weekly*, etc., are commonly known to the advertising world as mail-order publications.

There is a class of publications of the mail-order type, however, which the department has determined to be within the prohibition of the statute against publications “designed primarily for advertising purposes”; but that determination is not dependent upon their being mail-order publications, but upon a number of facts the legitimate inference from which is that advertising is their primary design. Among the facts which are always considered by this bureau in determining this question are:

(a) The character and volume of the whole circulation of the publication, the legitimacy and extent of the list of subscribers which includes an inquiry as to whether alleged subscribers are carried upon a pretended credit for an indefinite period; whether the names listed represent actual subscribers at all; and whether the sample-copy privilege is abused.

(b) The character of the price charged—that is to say, whether it is free, nominal or otherwise—and the collateral inquiry whether a price apparently real is rendered nominal or free by the return of equivalent value in the form of premium, reward, or the like.

(c) The characteristics of the publication itself with respect to the relative space devoted to advertising, the nature of the text in respect of its being a mere cover or mask for the advertising, and facts of a similar nature to be gleaned from a critical examination of the publication itself. This, of course, does not mean a censorship of the literary matter, but the mere determination in point of fact whether the dissemination of news or literary matter is the primary purpose.

Such have been the inquiries which, since the beginning of this reform, have been carried on in every case where it was necessary to determine the mixed question of law and fact as to whether any particular publication was designed primarily for advertising purposes. Without due consideration of all of these elements it is impossible to properly determine this question and thus enforce the law.

In dealing with this phase of the case the inspectors' report takes an altogether different ground. The recommendation that the publications be denied the second-class privilege is based upon two propositions:

(a) That the rate is nominal because the publication “is furnished at less than cost and that while it may have a value of 10 cents a year as a literary production, yet it is and has been conducted primarily for advertising purposes and as an aid in a scheme to defraud.” In other words, although the price and the value are commensurate the rate is nominal because the publication is conducted primarily for advertising purposes.

(b) That inasmuch as the operating expense is \$700,000 per annum and the subscription receipts but \$85,000 per annum, “there can be no question but that the advertising revenue of \$800,000 per annum becomes the principal business,” and hence the publication is designed primarily for advertising purposes. In other words, the more the revenue from advertising is devoted to the maintenance and development of the publication the clearer the design to conduct the paper for advertising purposes.

This reasoning would exclude practically every daily newspaper and every magazine from the second class. There is hardly a newspaper or periodical of the higher class in which the annual cost of production is not greatly in excess of the revenue from subscriptions alone. The magnificent service of the modern newspaper and the quality of the popular magazine are based fundamentally on the fact that their advertising revenue enables them to do for the subscriber what the subscriber's money alone would not enable them to do.

As an illustration, apply the rule invoked by the inspectors in these cases to the *Evening Star* of this city. Accepting the published statements with regard to circulation as well as to prices charged for advertising, a rough estimate shows that the receipts from the sales of copies of the paper for one year are approximately \$197,000, while the receipts from advertising patronage are approximately \$630,000. If the *Woman's Magazine* be held to be primarily designed for advertising purposes because of the disproportion between the advertising and subscription revenue, by parity of reasoning the *Evening Star* must be similarly dealt with.

A critical examination of the issues of the Woman's Magazine and Woman's Farm Journal shows that the space devoted to advertising as compared with the space devoted to reading matter is not greater on the average than that in the recognized periodicals. For example, the Woman's Magazine for June, 1905, contains 24 pages, of which 13 are reading matter and 11 are advertising. The same magazine for July, 1905, contains 20 pages, of which 13½ are reading matter and 6½ are advertising. Harper's Magazine for June, 1905, contains 327 pages, of which 162 are reading matter and 165 are advertising. The Woman's Farm Journal for March, 1905, contains 32 pages, of which 12 are reading matter and 20 are advertising. Scribner's for the same month contains 277 pages, of which 133 are reading matter and 144 are advertising. The Woman's Farm Journal for April, 1905, contains 32 pages, of which 15 are reading matter and 17 are advertising. McClure's Magazine for May, 1905, contains 299 pages, of which 112 are reading matter and 177 are advertising.

It will be seen from the foregoing comparison that the total amount of advertising carried in the publications in question is not on the whole greater in proportion than that carried by Harper's, McClure's, and Scribner's. Compare the June number (1905) of the Woman's Magazine with the Ladies' Home Journal for the same month. The former contains 43 columns, or 7,441 agate lines, of advertising as against 95 columns, or 19,080 agate lines, in the latter. The Ladies' Home Journal being approximately twice the size of the Woman's Magazine, there is no substantial difference in the relative amount of advertising in the two.

With respect to the text being a mere cover for the advertising, it would appear that the reading matter, although not of the highest literary merit, is prepared specially for these publications, and the publisher insists that it is edited with care. It consists chiefly of fiction in the form of short stories, which, so far as is known, are not clipped or reprinted; special articles similar to those found in Sunday newspapers; pages devoted to fancy work, fashions, and household hints, recipes, etc. In the absence of any evidence indicating that the subscribers do not subscribe for the paper on its merits, no test of the subscription list for that purpose having been instituted, it is practically impossible to say that the reading matter is intended merely as a mask for the advertising.

That the Woman's Magazine is a leading medium for mail-order advertising is shown by the fact that in the following list composed by the Rowell Advertising Agency and purporting to name the best six mail-order publications in the country it is found third:

Eve ybody's Magazine, Ladies' Home Journal, Woman's Magazine, Saturday Evening Post, McClure's Magazine, Collier's Weekly. (See Printers' Ink, Feb. 1, 1905, p. 34.)

2. *Special advertising purposes.*—The second ground of complaint against these publications is that they are designed primarily to advertise the other businesses in which the stockholders and officers of the Lewis Publishing Co., and especially E. G. Lewis, are interested. In other words, that they fall within the general class of "house organ."

In approaching this inquiry it is necessary to bear in mind the principle which has heretofore been regarded as controlling, and which is well illustrated by the opinion of the Assistant Attorney General for this department rendered on June 29, 1881. In the case then under consideration it appeared that the proprietors of the paper were interested as proprietors of a business largely advertised in its columns, and that three-fourths of the number of copies printed were sent out free to the recipients. Upon these facts the Assistant Attorney General proceeded to render his opinion as follows:

"As already remarked, while the fact that the publishers are the proprietors of a business extensively advertised in said publication would not, if standing alone, affix to the paper the character of an advertising sheet, yet when that fact is taken in connection with the further consideration that three-fourths of the issue is for free circulation I think the conclusion inevitable that the paper is not entitled to the pound rates." (1 Op. Asst. Attys. Genl. P. O. Dept., p. 627.)

It appears that at one time or another since these papers have been published by E. G. Lewis, the president of the Lewis Publishing Co., he has been personally interested in the following concerns, each of which has been advertised in his magazines:

University Heights Realty & Investment Co., World's Fair Contest Co., Development & Investment Co., United States Fiber Stopper Co., California Vineyards Co., Camp Lewis, Peoples United States Bank.

With respect to the University Heights Realty & Investment Co., it appears from an inspection of the magazines that it has been advertised in each of them but once—in the Woman's Magazine for December, 1902, and in the Woman's Farm Journal for February, 1903. It may, therefore, be excluded from consideration.

The World's Fair Contest Co. seems to have been interested in one of those guessing contests which were finally determined to be contrary to the law in the opinion of the Attorney General of November 28, 1904. Under that opinion the scheme was permitted to operate to a conclusion. It was extensively advertised in the Woman's Magazine from September, 1902, to October, 1904, receiving, in addition to the regular advertising space, two short reading notices and an editorial. It was regularly advertised in the Woman's Farm Journal from February, 1903, to October, 1904.

The Development and Investment Co. was advertised in the Woman's Magazine with more or less regularity from September, 1902, to January, 1904, since which time it has not been advertised. The advertisement of the same company in the Woman's Farm Journal was discontinued in December, 1903. Except for reading notices appearing in September, October, and November, 1902, this company does not seem to have had an extensive advertising in either magazine.

The United States Fiber Stopper Co. was advertised regularly in both magazines from February to August, 1903, several of the issues containing full-page advertisements.

The California Vineyards Co. was one in which, according to the inspectors' report, Mr. Lewis was interested as a bondholder. It was advertised with more or less regularity in both magazines from November, 1903, to August, 1904, some of the issues containing full-page advertisements.

"Camp Lewis" appears to have been a camp in connection with the Louisiana Purchase Exposition for the accommodation of patrons of the Lewis Publishing Co. who might visit the fair. It was not conducted as a money-making enterprise, and its further consideration is not material to this inquiry. "Camp Lewis" was obviously designed to advertise these publications, instead of the publications being designed to advertise it.

From January, 1904, to May, 1905, the Peoples United States Bank appears to have been extensively advertised in the Woman's Magazine, and from January, 1904, to April, 1905, in the Woman's Farm Journal. It received in each magazine for several months considerable advertising in the form of a reading notice. That practice, however, seems to have been discontinued. Its continuance would have raised a strong presumption against the papers, but that presumption can not be said to exist at the present time.

In connection with the foregoing advertising, Mr. E. G. Lewis, president and manager of the Lewis Publishing Co., makes oath under date of June 22, 1905, as follows:

"That all advertising of every sort whatever which has appeared in the columns of these two publications since owned by the Lewis Publishing Co. has been charged for and paid for at the regular advertising rate, irrespective of whether any officer or stockholder of the Lewis Publishing Co. has been interested directly or indirectly therein. This, of course, excepts such losses from bad debts and such accounts outstanding for advertising as are a regular part of the business."

Taking all of the advertising now in these publications in aid, not only of the enterprises mentioned but of all those in which the numerous stockholders of the Lewis Publishing Co. are interested, so far as ascertained, it appears that for the months of June and July, 1905, the proportion of such advertising to the whole space in the Woman's Magazine was 12.5 per cent and 11.2 per cent, respectively. Taking Harper's Magazine for June, 1905, as a standard of comparison we find that the advertising of the publisher's other business in that number amounted to 9.1 per cent. In this comparison it should be borne in mind that the house advertising in the case of "Harper's" does not include any advertising of concerns in which the individual shareholders of the publishing company may be interested, no information having been secured on this point. If we compare the amount of the publisher's advertising with the whole amount of advertising we find that in the Woman's Magazine of June and July, 1905, the proportion was respectively 27.2 per cent and 35.3 per cent. In this estimate is included, as above, the advertising of such well-known advertisers as the Sterling Remedy Co., manufacturers of Cascarets, of which H. L. Kramer, first vice-president of the Lewis Publishing Co., is treasurer and general manager; also of the Brown Shoe Co., of St. Louis, the vice president of which, J. H. Roblee, is a shareholder to the extent of \$1,000 in the Lewis Publishing Co. If these collateral advertisers were excluded in this calculation, the percentage would be very much less. The same thing is true in the case of the Woman's Farm Journal, in the March and April, 1905, issues, of which the proportion of the publisher's advertising to the whole amount of advertising was 13.7 per cent and 26.4 per cent, respectively.

Although we have no such data in respect of other papers with which comparison can be made, we find that in Lippincott's Magazine for May, 1905, the percentage of the publisher's own advertising to the whole amount of advertising was 31.9.

3. *Circulation at nominal rates*.—The grounds upon which the inspectors base their conclusions that both of these publications are sold at nominal rates are not tenable. The department did, in the beginning of the reform, undertake to ascertain in certain cases the amount of revenue from subscriptions and the amount from advertising patronage, with a view to using such information as an aid in determining the right of a publication to the second class. However, this sort of evidence was not made use of, because it was found to be wholly immaterial in law whether the revenue from subscriptions paid for the entire maintenance of the paper or not. If a publication has a "legitimate list of subscribers," and if its rate is neither free nor nominal, the proportion of revenue from subscriptions and advertising is of no value as evidence against the publication. So far as the record discloses, every subscriber upon the lists of the *Woman's Magazine* and *Woman's Farm Journal* is an "actual" subscriber. The publisher so states upon oath, and the test of the subscription usually made by this office is lacking. It must be taken for granted, then, that the subscription lists are legitimate. Neither does it appear that the subscription price in any instance is returned in the form of a premium or gift. To exclude the publication on the sole ground of a 10-cent rate being "nominal" would be to put a rigid construction upon that term which has never yet been applied. What is a "nominal rate" remains to-day an unsettled question; and in all other cases involving the question of primary advertising design it has been found possible to reach a determination without placing the ground of decision upon the perilous question of "nominal rate." The importance of avoiding a hard and fast rule on this point will be apparent when we consider that many of the great dailies throughout the country are sold at a less price per copy than the *Woman's Magazine* and *Woman's Farm Journal*. For illustration, one of the great western dailies is sold for \$1 a year, which is three copies for a cent, while the *Woman's Magazine* and *Woman's Farm Journal* (monthly publications) are sold at 10 cents a year, or approximately 1 cent a copy. Whatever value the provision in the law as to a nominal rate may have had in the beginning—and I find no precedent indicating that it was ever usefully applied—it is obviously of but little value under modern conditions, when improved machinery, the cheapened cost of paper, and other results of modern competition and the universal reliance upon advertising revenue enable practically all newspapers and periodicals to circulate at rates which would once have been regarded as nominal and below which it is hardly possible to fall.

III. CONCLUSIONS OF THE THIRD ASSISTANT POSTMASTER GENERAL.

Upon the foregoing state of facts alone, without an analysis of the circulation and without evidence as to whether the claimed list of subscribers is, as a matter of fact, legitimate in its entirety, as required by law, and the other collateral aids in determining what is the primary design of the publications, I do not feel warranted in holding that the *Woman's Magazine* or the *Woman's Farm Journal*, as distinguished from publications of the same general class, is primarily designed for advertising purposes in general or to specially advertise the other businesses of the publishing company.

Had the facts with regard to the matters just mentioned been developed by proper inquiry, it is possible that, taken in connection with what I have already recited as to the advertising features, they might have caused a different conclusion.

If you direct it, an investigation along the usual lines pursued by this bureau can be carried forward in respect of these publications; but, in my judgment, such a course can best be followed later, when the determination of the department in the cases of some other mail-order publications, which are far clearer and more flagrant and which are now before the courts, have received judicial approval.

IV. RECOMMENDATION AS TO PRESENT ACTION.

In view, then, of the fact that these are not clear cases and that the reform, if it is to be carried on, must be carried on by establishing our contentions in cases where they are palpably correct, I recommend that these cases be closed by a letter from the Third Assistant Postmaster General to the postmaster at St. Louis, substantially as follows:

"You are informed and you will so advise the publisher of the *Woman's Magazine* and *Woman's Farm Journal* that in view of the pending litigation wherein publications of apparently the same general class are involved, and in view of the long continuance of those publications in the second class and the fact that the department is not prepared to deal with the class as a whole at the present time, it has been determined to authorize you to continue to accept both publications as matter of the

second class until the questions are settled and a definite rule for dealing with all such cases can be formulated and published, or until you are further advised in these two individual cases. Nothing in this decision is to be construed as approving the right of these two publications to the second-class rates or as guaranteeing a continuance of their acceptance in the mails at those rates should it be determined in future that they are not so entitled."

I have come to the foregoing conclusion without giving any consideration or weight to the statements of the publisher:

First. That if the space devoted to advertising in general in either publication be too great he will, on notice, immediately reduce it to meet any rule which the department may promulgate;

Second. That if the space devoted to advertising the other businesses of the publishing company be too great he will, on notice to that effect, promptly reduce it, or eliminate it altogether, according to any rule made by the department;

Third. That so far as a nominal rate is concerned his publications are cheap because they are for the common people, who can not afford to pay for the higher-priced magazines; but that if the price be too low he will, immediately upon notice from the department, raise it to any acceptable figure;

Fourth. That no advertising is accepted in these publications without careful scrutiny as to its moral tendency, and that the publisher guarantees to make good the actual loss any subscriber sustains from being swindled by any advertiser in these publications.

In closing I deem it proper to call attention to the seriousness of the function performed by the Third Assistant Postmaster General, acting on behalf of the Postmaster General in relation to these questions of classification. Since it is utterly impracticable for the Postmaster General to sit in judgment upon each case as it arises, the decision of the Third Assistant Postmaster General must be final in most cases. Such decisions affect one of the most extensive industries in the country and should be sound in morals as well as in law. Otherwise they may bring destruction to legitimate business enterprises and discredit upon the postal service. It is therefore important that the Third Assistant Postmaster General should reach a judgment only after careful consideration of the evidence which experience has shown to be relevant and material. Especially should he do so without haste or bias, and uninfluenced by an preconceived notion.

The foregoing memorandum and the evidence upon which it is based have been reviewed by Mr. Henry H. Glassie, special counsel of the department in litigation in relation to this class of cases. He concurs in the findings and recommendations.

Respectfully submitted.

Third Assistant Postmaster General.

EXPENDITURES IN THE POST OFFICE DEPARTMENT.

COMMITTEE ON EXPENDITURES IN THE POST OFFICE DEPARTMENT, HOUSE OF REPRESENTATIVES, *Thursday, July 13, 1911.*

The committee met at 10 o'clock a. m., Hon. Joshua W. Alexander (acting chairman) presiding.

The following members of the committee were present: Messrs. Alexander, Redfield, McCoy, Austin, and Towner.

There were also present: Mr. Edwin C. Madden, attorney in fact for the Lewis Publishing Co., and Mr. James J. Britt, Third Assistant Postmaster General.

STATEMENT OF MR. EDWIN C. MADDEN, ATTORNEY IN FACT FOR THE LEWIS PUBLISHING CO.—Continued.

Mr. ALEXANDER. Judge Towner would like to ask Mr. Madden a few questions before he proceeds with his statement.

Mr. TOWNER. I would like to ask you how much of the matters of fact of which you have testified are within your own personal knowledge?

Mr. MADDEN. All the matters of fact stated as such are within my personal knowledge.

Mr. TOWNER. Now, for instance, when you are testifying with regard to these transactions of the various corporations and the bank and all those matters, manifestly these facts could not be within your personal knowledge?

Mr. MADDEN. No, sir; I read statements concerning them, with comment to connect the statements; that was all.

Mr. TOWNER. Well, my object was not to criticize what you had done, but to find out, if I could, what matters you really had personal knowledge of. Let me ask you more particularly: Of course, you have personal knowledge of the department's side of these transactions; that is, the knowledge you had while acting as Third Assistant Postmaster General?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. You had personal knowledge of all these facts, and you had personal knowledge of all the communications that were received by you while you were the Third Assistant Postmaster General?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. But as to the communications and actions of the Postmaster General, you have no personal knowledge regarding those?

Mr. MADDEN. I have his writings.

Mr. TOWNER. But that is not personal knowledge?

Mr. MADDEN. My knowledge is derived from his writings.

Mr. TOWNER. And, as I understood you to say, the matter was taken from your hands by the Postmaster General?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. Have you, then, any personal knowledge of what was done by the Post Office Department except that which is derived from the communications and records to which you had access?

Mr. MADDEN. No, sir; that is, except my own actions, because there were no verbal communications between us.

Mr. TOWNER. Will you be kind enough to tell the committee just what your relations are to the Lewis Publishing Co.?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. And with E. C. Lewis and the other corporations connected with this transaction?

Mr. MADDEN. Yes, sir. I left the department about 16 days after Mr. Cortelyou left it. I have the exact dates; I left on March 22, and he left on March 4. I remember that now. Subsequently, as near as I can recollect, about a month after, one of the Lewis Publishing Co.'s representatives here called me over the telephone and asked me some questions concerning the transactions of the department, and it appears that in answering that question I gave this representative some sort of clue. I do not remember what it was, but he called on me immediately. In the meantime, the Lewis Publishing Co. had been in court in St. Louis, and I remarked to him that the company apparently had not had its case fully presented, and that, in my opinion, if its case had been fully presented, no such judgment as had been rendered would have been rendered. Apparently he communicated that to Mr. Lewis, the president of the Lewis Publishing Co., because Mr. Lewis subsequently asked for an interview with me. There was some correspondence, and he asked me if I would meet him somewhere so he might have a conference with me. The arrangement then was made that he should pay my expenses to come to St. Louis and look over the plant and see what could be done toward righting what was considered the great wrong that had been done.

While I was there I told Mr. Lewis a good deal of the inside of it, and he said that he proposed to put his institution back on its feet, and that in so much as I had had charge of the litigation in the department, he thought I would be a good man to take charge of his litigation. The result of it was that he made a proposition to me. I brought it back with me, and after considering it a while, I went to Mr. J. J. Darlington, of this city, who is one of, if not, the leading legal lights here, to ask his opinion about accepting compensation under the circumstances. After listening to what I said, he thought that it was best not to accept compensation, but he said it was my duty to do everything I possibly could to assist the Lewis Publishing Co. to get justice. I then wrote Mr. Lewis that this was Mr. Darlington's judgment, and that I would help him all I could, but would not accept any compensation. That, I should say, was along about the 1st of August.

Mr. TOWNER. Of what year?

Mr. MADDEN. 1907. Subsequent to that time, the editor of the Washington Times, Mr. Allen D. Albert, apparently incensed over

what he had heard about the case, went to St. Louis and investigated it on his own account. I think he also did that on account of other newspapers. He returned to Washington and rendered a report to the department, and it was of such a nature as to condemn the department for what it had done.

Mr. TOWNER. I beg your pardon; you said he made a report to the department; do you mean that?

Mr. MADDEN. I do, sir.

Mr. TOWNER. But he did not go there as an inspector for the Post Office Department?

Mr. MADDEN. No, sir; his report states, and I have seen it, that he went there largely at the instance of Mr. Cortelyou, who was then the Secretary of the Treasury, and with a desire to clear Mr. Cortelyou from the reflections that were being made upon him.

Mr. TOWNER. Was the report of his investigation published?

Mr. MADDEN. No, sir; not that I know of. Now, this was stated to me, and I have no proof of it: After he rendered his report to the then Third Assistant Postmaster General, Lawshe, it has been said that the department asked him to send in all copies of it at once. I do not know whether that is true or not.

Mr. BRITT. Will you be kind enough to repeat that name?

Mr. MADDEN. Allen D. Albert. Since then Mr. Cortelyou has identified the report of Mr. Albert in evidence.

Mr. MCCOY. You say he identified it in evidence?

Mr. MADDEN. Yes, sir; in a case in New York—in litigation.

Mr. REDFIELD. In a matter having to do with this case?

Mr. MADDEN. Yes, sir; an entire review of it, in fact. Subsequent to that report being filed in the department, Mr. Lewis renewed his proposal to me to take charge of the litigation, and I went to Mr. Darlington a second time and told him the circumstances. Mr. Darlington advised me that there was no reason then why I should not accept compensation, and I did so from that time.

Mr. TOWNER. What was that date?

Mr. MADDEN. I should say that was possibly about the 1st of September.

Mr. TOWNER. In 1907?

Mr. MADDEN. Yes, sir; 1907.

Mr. TOWNER. And since then you have been in the employ of Mr. Lewis?

Mr. MADDEN. Of the Lewis Publishing Co.

Mr. TOWNER. Of the Lewis Publishing Co.?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. Have you been in the personal employ of Mr. Lewis?

Mr. MADDEN. Not in his personal employment, but in the employ of the Lewis Publishing Co.

Mr. TOWNER. I understand they are distinct, of course. Have you been in the employ of any of the other corporations?

Mr. MADDEN. No, sir; not at all. Now, that might be modified slightly by this statement, that frequently the checks which have come to me in payment of my services have not been the checks of the Lewis Publishing Co., because the company has not always had the money, and somebody else has paid for them.

Mr. TOWNER. I did not mean to inquire into that.

Mr. MADDEN. I presume they will look up the checks to try to prove that I got compensation before——

Mr. TOWNER (interposing). My object is entirely different.

Mr. MADDEN. I understand that, and I am glad you asked the question.

Mr. TOWNER. Now, then, in so far as your relation to the Lewis Publishing Co. is concerned, it is that of an agent to represent their interests?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. And it is not that of an attorney at law?

Mr. MADDEN. No, sir.

Mr. TOWNER. Of course, you have had since September, 1907, a quite intimate knowledge of the transactions of the Lewis Publishing Co.?

Mr. MADDEN. Well, I should say it is not as broad as that. I simply took up this case, and I did not have anything to do with their other business at all. Once or twice they have asked me to advise them on matters relating to the mail service, and I have written letters to the department, either for Mr. Lewis's signature or my own.

Mr. TOWNER. Have you served the company in any other capacity than as their agent with regard to the transactions of the company with the Post Office Department?

Mr. MADDEN. No, sir.

Mr. TOWNER. Your employment has been to adjust, if possible, the relations between the Lewis Publishing Co. and the Post Office Department and to secure for them what you consider their rights?

Mr. MADDEN. Exactly so.

Mr. TOWNER. As a publishing company, under the law?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. And you are now so engaged?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. What officers or employees of the Lewis Publishing Co. will be present at this hearing to testify, Mr. Madden?

Mr. MADDEN. We have out there about 40 witnesses that we would like to put on the stand, but the company is utterly unable to bear the expense of transporting them here. We anticipate that when you have gone deeper into this case a subcommittee will go out there and see the situation for themselves and take the testimony of these witnesses.

Mr. TOWNER. Well, Mr. Madden, the committee, of course, can not determine that matter at this time.

Mr. MADDEN. I understand that.

Mr. TOWNER. But I believe you were notified by the chairman of the committee that the committee would hear any of the witnesses that you desired to present.

Mr. MADDEN. I believe Mr. Lewis will come on notice.

Mr. TOWNER. Of course, the committee would certainly desire that Mr. Lewis should personally appear and testify. When will he be present?

Mr. MADDEN. I can call him at any time, I imagine; that is, whenever you are ready for him. Let me explain here that on various matters contained in these charges I am prepared with the affidavits of people competent to testify upon them.

Mr. TOWNER. It may be that the committee will be satisfied with these. Of course, we can not tell about that until we go into the matter. Is there any reason why Mr. Lewis could not be here to testify within two days after you leave the stand?

Mr. MADDEN. None that I know of.

Mr. TOWNER. Will you ask him to come, or will it be necessary to subpoena him?

Mr. MADDEN. I will do whatever you suggest in that case. It would probably be better for me to ask him to come, and then if he refuses, you could subpoena him. He asked me a day or two before I left when I thought he would be wanted, and I told him that I thought when the committee had gone far enough into it they might want to send a subcommittee out there, in which event it would not be necessary for him to come.

Mr. TOWNER. It is only proper to say, and, after a conference with other members of the committee, I think I am authorized to say to you, Mr. Madden, and through you to him, that whatever action may have been taken anywhere in the prosecution of this company will not modify or change in the slightest degree the action of this committee in this hearing.

Mr. MADDEN. I thank you very much, sir. I am sure that will be very gratifying to Mr. Lewis, as it is to me—that the matter is to be brought up here entirely apart from that.

Mr. TOWNER. What other officers of this Lewis Publishing Co. are there whose testimony could be given to this committee here at Washington, that would be of value to the committee?

Mr. MADDEN. I should say there is Mr. F. V. Putnam, the treasurer, the members of the board of directors, whose names I can not state just at this moment; the secretary of the company, Mr. William E. Miller, and a number of employees whose names I will furnish, if you want them, a little later.

Mr. TOWNER. Will there be any necessity for anything further than the testimony of the secretary and the treasurer?

Mr. MADDEN. I do not imagine so. The situation with the company is very unfortunate. It is practically down and out, and all of the old employees are out and gone. There are very few left, as most of them are new people. The situation is pretty hard, and it will be very difficult for them to get together and locate these people and get them here. I imagine, however, that they could be found.

Mr. ALEXANDER. Did ex-Gov. Stephens have anything to do with the active management of the bank?

Mr. MADDEN. He was a director; yes, sir.

Mr. ALEXANDER. Was he active with it?

Mr. MADDEN. He was a director, and I have seen him there attending meetings of the board of directors.

Mr. TOWNER. Did you bring with you, or have sent here, any documentary material bearing on these questions from the records of these companies?

Mr. MADDEN. Yes, sir; I have the original letters—that is, the original letters of the department to the company—and copies of the replies of the company, and so on, in connection with the matter.

Mr. TOWNER. Have you brought with you the files of the Woman's Magazine and the Woman's Farm Journal?

Mr. MADDEN. The files?

Mr. TOWNER. Yes, sir; the files.

Mr. MADDEN. No, sir; that would take a couple of box cars, and I have not brought them. I have a summary of them from the official reports.

Mr. TOWNER. Can you furnish the committee the files of the Woman's Magazine and the Woman's Farm Journal for the year 1905 and for the year 1910 down to the present date?

Mr. MADDEN. Do you mean all the files? Certainly they can be produced, but it would be an enormous undertaking.

Mr. TOWNER. Why so?

Mr. MADDEN. Because the circulation of the Woman's Magazine in 1905 was a million and a half copies.

Mr. TOWNER. The Woman's Magazine is a weekly publication, is it not?

Mr. MADDEN. No, sir; monthly.

Mr. TOWNER. Then there would be but 12 copies of it?

Mr. MADDEN. You mean copies of the publication?

Mr. TOWNER. Yes, sir.

Mr. MADDEN. I thought you meant the letter files and subscription files. I can wire to have these files sent on. I have some of them here with me. I have them here for both ends of the line, but I did not think the intermediate ones would be of any importance and I did not load myself up with them.

Mr. TOWNER. If there are any other numbers of the magazine that you think would be of special interest, you could secure them for the committee?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. I mentioned the year 1905 because that was the year of the trouble, and the files now would show somewhat the condition of the journals at the present time.

Mr. MADDEN. Yes, sir; I have copies of the publications as they were ruled out on March 4, 1907, and as they were readmitted in December, 1907.

Mr. TOWNER. The committee will be glad to have you furnish the files for 1905 and for 1910, down to the present date, and such others as you desire to present to the committee.

Mr. MADDEN. I will wire for these at noon and they can dispatch them to-day.

Mr. TOWNER. In this connection, have you brought with you the articles of incorporation and the names of the incorporators and a statement showing the ownership of the stock in these various companies?

Mr. MADDEN. I have not.

Mr. TOWNER. Will you secure for the use of the committee the articles of incorporation, the names of the incorporators, and a statement showing the ownership of the stock in the University Heights Realty & Development Co., the University Heights Development Co., the World's Fair Contest Co., the Development & Investment Co., the Controller Co. of America, the United States Film Stopper Co., the Lewis Addressing Machine Co., the California Vineyards Co., the Camp Lewis Co., the Lewis Publishing Co., the Peoples United States Bank, the American Woman's League, and the People's University, and also, in so far as you can, the literature that was sent out in the promotion of these concerns?

Mr. MADDEN. The reason I have not this matter——

Mr. TOWNER (interposing). The question is, can you furnish them?

Mr. MADDEN. I will do the best I can to produce them, but I have not considered them as having the slightest relevancy to this question. The charges in this case have reference to abuses of the mail-classification law, and these matters are entirely apart, in my judgment.

Mr. ALEXANDER. It seems to me that if we were trying the case of the action of the department in issuing the fraud order against the Peoples Bank—is that what you call it?

Mr. MADDEN. The Peoples United States Bank.

Mr. ALEXANDER. It seems to me that if we were trying the case of the action of the department in issuing the fraud order against the Peoples United States Bank, then it might be relevant in that connection, but what is its relevancy to this matter under inquiry here?

Mr. TOWNER. I do not know, Judge. I just want them here in case they should be required.

Mr. ALEXANDER. I notice in the Washington Post this morning a St. Louis dispatch, dated July 12, in which it is stated:

E. G. Lewis, until recently publisher of a number of magazines and promoter of enterprises, was indicted by a special grand jury in the United States District Court to-day on charges of fraudulent use of the mails.

Now, this communication does not state, except in the most general way, what is the nature of the charges contained in this indictment.

Mr. MCCOY. Do you happen to know whether this special grand jury was impaneled with reference to the Lewis case only?

Mr. MADDEN. I think so.

Mr. MCCOY. Do you know the date on which the indictments were found.

Mr. MADDEN. No, sir.

Mr. MCCOY. Do you know the dates of the transactions on which the charges were based?

Mr. MADDEN. I do not know.

Mr. ALEXANDER. When was this special grand jury impaneled?

Mr. MADDEN. I can not say, except that it met on July 6.

Mr. ALEXANDER. And after this case had been set down for trial before this committee?

Mr. MADDEN. Yes, sir.

Mr. REDFIELD. It was a singular coincidence.

Mr. MCCOY. I do not see any harm in having all those things Judge Towner asked for. They may or may not be relevant to the inquiry we are making. At any rate, they could be here.

Mr. TOWNER. It may be of value to Mr. Lewis that they should be here.

Mr. MCCOY. In other words, let us get as much of this case before us here in Washington as we can, and if we find there is nothing further that we can do here, then the question of having a subcommittee go to St. Louis could be determined.

Mr. MADDEN. What you have asked for means a tremendous amount of labor there.

Mr. TOWNER. I should not think so.

Mr. MADDEN. There are 18,000 stockholders of the Lewis Publishing Co. and 27,000 stockholders of the Peoples United States Bank. I do not know about the others at all. I happen to know about these two I have mentioned.

Mr. McCoy. Do they not keep stock books?

Mr. MADDEN. They may not have stock books; I think they keep them according to the card system; they did when I saw them. The furnishing of this matter would involve a great deal of labor, and the company is in no situation now to employ the necessary help. I think if you can bear with the situation until you can send a subcommittee out there to look into them it will be a very much less costly matter to the company. However, if you want them, I will get them.

Mr. ALEXANDER. In view of the unfortunate condition of this company I do not want to impose any additional hardships on them unless the matter desired is pertinent and relevant to this inquiry.

Mr. TOWNER. It seems to me that it might become very relevant and pertinent to this inquiry.

Mr. McCoy. Let me ask this question with regard to the practice in the department with reference to determining the right of any matter to the second-class privilege: Does the department take into consideration the fact that the stockholders in the paper may also be stockholders in the various enterprises which that paper is advertising and endeavoring to promote in determining whether the matter is entitled to second-class rates or not?

Mr. MADDEN. My answer to that is that apparently in this case they did. They have no right to do so, however. The question of mail classification depends altogether on the tangible thing submitted for classification. As I said, they should consider the character of the matter to be transmitted, and the only other thing they should consider in determining its right to the second-class rates would be its subscription list. The publication may advertise a million frauds, but that should not stop its classification or change it if it has been made. There is another action for that.

Mr. McCoy. In other words, let us suppose a case: Suppose that a publication claiming the second-class rate was knowingly advertising fraudulent schemes; would that fact in any way be considered in connection with its classification, or would it be treated under some different heading?

Mr. MADDEN. Yes, sir; it would come under a different heading.

Mr. McCoy. It would be treated and passed upon under the heading of frauds and not of classification?

Mr. MADDEN. Yes, sir; that is correct.

Mr. TOWNER. Of course, I presume all these matters would be considered together. What relation they may have to it I confess I do not know.

Mr. ALEXANDER. The Government has much of this information, I believe.

Mr. MADDEN. It is in the report of the inspectors here.

Mr. TOWNER. But that is not evidence.

Mr. MADDEN. I read a statement of it.

Mr. BRITT. The department has in its possession in the form of official reports of post-office inspectors a statement of the stock issued, showing such items as the number of shares and the par value, and other matters found in connection with the examination of the business concerns of the publishing company.

Mr. TOWNER. How about these other companies?

Mr. BRITT. I do not know how many of the other companies named were actually in existence at the time of the inspector's investigation,

nor do I know to what extent they were inquired into, if they were in existence at that time.

Mr. McCoy. Do you consider that as material evidence in determining whether or not the publication is entitled to a second-class rating; that is, whether the interest of the stockholders of that paper in various enterprises has anything to do with the question of the classification of the paper?

Mr. BRITT. It might be relevant in this way: One of the things to be determined in ascertaining whether a publication is entitled to the second-class mail privilege is whether or not the publication is primarily designed for advertising.

Mr. McCoy. Is there any way to determine that except by the relative amount of advertising and reading matter?

Mr. BRITT. I was coming to that. In the determination of the main question, the department inquires into the number of concerns owned by the publishers, and how extensively they are advertised in these publications; it also inquires into the number and extent of the advertisements generally in the publication; all of which facts, and those in connection with the advertisements, are inquired into to determine whether it comes within the prohibition of the statute. If that prohibition appears to be present, then the publication would not be lawfully admissible. The extent of the advertisements, both of the concerns of the publishers and other concerns, when that question is sprung is inquired into for that purpose. In that way, as I conceive it, there would probably be some relevancy.

Mr. REDFIELD. Then, does the committee understand you to mean that if a newspaper, for example, happens on some occasion to publish an altogether extraordinary amount of advertising matter, or diminish the amount of its reading matter, its admissibility or continuance as second-class matter is affected thereby?

Mr. BRITT. Not by that alone. That might be one circumstance among others to be considered, but it would not be jeopardized by that one occurrence alone. But suppose there is a publication that has but 5,000 subscribers; that these 5,000 subscribers have their subscriptions paid for by A, who is a large and extensive advertiser in the publication. In considering the question of the admissibility of that publication, or if already admitted and its right to the privilege was being inquired into, that evidence would be pertinent in determining whether the main purpose of that publication was simply advertising and not furnishing public information, as the statute requires.

Mr. McCoy. That involves another element. You say that if A paid for 5,000 subscriptions. That was not my point exactly. Judge Towner has asked for information about a number of concerns, which I presume were concerns in some way under the management of Mr. Lewis. Now, let us suppose for the sake of the argument that there was no advertising in this Woman's Magazine except by these companies. Let us suppose further that it was not paid for except by Mr. Lewis; that it was free advertising, but that the paper, nevertheless, maintained a high literary standard. Would that paper be excluded from the second-class privilege on that account? I am stating an extreme case.

Mr. BRITT. The circumstances which you suggest are certainly sufficient to call for serious consideration as to whether the depart-

ment would under the law deny that publication entrance to the second-class privilege, or they might endanger its continuance in the second class, if already admitted.

Mr. McCoy. Why should that be so?

Mr. BRITT. Upon this principle, that the publisher owning and publishing the newspapers appears simultaneously with that to be the owner of sundry and divers other interests which are extensively advertised, inflated, and puffed in his publication——

Mr. McCoy (interposing). Then, right there, you are going into the fraud part of it. I am speaking simply of the quantity of the advertising and the fact that it was not paid for, regardless of the puffing, or whatever you please.

Mr. ALEXANDER. I feel this way about the matter: They have asked for a hearing before this committee, and I am perfectly willing and ready to hear any testimony they desire to submit, but I do not desire to impose any additional burdens or hardships upon them by requiring them to produce evidence that may not be relevant to this inquiry. I am, of course, in favor of requiring them to produce all the evidence they ought to produce. Mr. Lewis is under indictment, and I do not know whether his counsel, under the circumstances, would regard it as wise to permit him to come here and testify. That is a matter for him and his counsel.

Mr. McCoy. Judge Towner has suggested the production of certain matter which may be very valuable to us. Mr. Madden, representing Mr. Lewis, states that it would be very burdensome to produce it here. I was simply trying to find out what possible relevancy, assuming that he had it here, it would have, so as to save the Lewis Co. the burden of producing it here if it is not worth anything.

Mr. MADDEN. May I interject a word there? There a number of suits pending for the appointment of receivers in these various enterprises. I believe they are to come up for a hearing on the 17th day of this month. I do not know whether the records could, under the circumstances, be sent here. I am not sure as to that. I can do the best I can to get them.

Mr. McCoy. Let me suggest that you telegraph out to the Lewis Publishing Co., or to Mr. Lewis, what Mr. Towner has suggested here and find out whether the request can be complied with and how soon. You could, of course, state anything in the telegram in connection with the matter that you see fit to state, but have them to send a reply here as to whether or not that request can be complied with and how soon.

Mr. MADDEN. I will do so.

Mr. TOWNER. If, in any way, Mr. Madden, you can furnish the committee with this information, so it can be something in the nature of first-hand information, and not the statements of somebody else about them, I should be glad to get it, and to have it in the easiest way possible for you to produce it. I am sure it is not my desire, nor is it the desire of the committee, to impose any unnecessary burdens on the company you represent.

Mr. McCoy. I would like to have before the committee anything in the way of evidence which the department had before it in the consideration of this case, so that we can make up our minds on the same testimony that the department acted upon.

Mr. TOWNER. You referred on yesterday to a woman's league—I do not believe I know the name of it.

Mr. MADDEN. The American Woman's League.

Mr. TOWNER. Yes; the American Woman's League. Now, that has some connection with the enterprises of Mr. Lewis, does it not?

Mr. MADDEN. I am having a statement forwarded to me on that, but it is not here yet. For the time being, I will make my own statement about it. When Mr. Lewis found himself in the condition he was in after the ruling of the department on March 4, 1907, he organized the Woman's American League as a subscription-obtaining enterprise. It was a new idea entirely, and ran somewhat counter to the American News Co.'s system of distribution. In return for the services of the members of this American Woman's League, he guaranteed to take the ordinary commission which is paid and make use of that in furnishing them education, etc., along the lines laid down in his prospectus. Fifty-two dollars' worth of subscriptions entitled the woman to a life membership and to the benefits of the American Woman's League for herself and minor children for life. I may say that at this time—that is, just before I left St. Louis—they informed me that 51,000 people were now receiving instruction by mail under this system. There are between 70,000 and 100,000 persons in the league. I can not give you the exact number, because I did not deem that of importance here. Its connection with the Lewis Publishing Co. was that of circulation, in order to build up again what had been stricken down—

Mr. TOWNER (interposing). That, then, has some direct connection with the Lewis Publishing Co.?

Mr. MADDEN. Only as a subscription-getting agency.

Mr. TOWNER. If I understand correctly, it is charged by the Post Office Department that these subscriptions to the American Woman's League represent in large part the subscriptions that were sent by these subscribers to persons who themselves did not pay the subscriptions. In other words, they were gift subscriptions, which the department claimed were not bona fide?

Mr. MADDEN. Yes, sir; that is a correct statement of the charge. That applies, not to the magazines under consideration, but that applies to the Woman's National Weekly, which is a later publication. That matter would come along in due course of presentation.

Mr. TOWNER. Do you expect to present all these matters to the committee?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. Together with the method of organization of the American Woman's League and its present status and condition?

Mr. MADDEN. I believe there is a gentleman who came in here by surprise to me who can tell you better than I can about that. I refer to Mr. Cohen.

Mr. TOWNER. It does not make any difference where the information comes from. Can you furnish it later?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. As I understand it, there has been built up as one of these subsidiary corporations, or perhaps I should say connective corporations, a school or college or university?

Mr. MADDEN. Yes, sir; through which 51,000 people are receiving instruction every day.

Mr. TOWNER. That has a separate existence, has it?

Mr. MADDEN. Yes, sir; it is endowed by the American Woman's League.

Mr. TOWNER. And that, also, has a connection with this matter before the committee?

Mr. MADDEN. None that I know of. I do not so consider it.

Mr. TOWNER. At least you can furnish the committee information with regard to it?

Mr. MADDEN. Yes, sir. Just prior to leaving I anticipated at the last moment that there might be some question of that kind, and I went to one of the gentlemen in charge and asked him to make up a statement that I could use here if you called for it, and I expect that will be here by to-morrow.

Mr. TOWNER. Are there any other institutions that I have not referred to that are connected with Mr. Lewis?

Mr. MADDEN. I do not know anything about the connections. My connection is simply with the Lewis Publishing Co., and the rights of its publications in the mails.

Mr. TOWNER. So far as you know, that is all?

Mr. MADDEN. That is all I know of.

Mr. TOWNER. You spoke of these in your testimony.

Mr. MADDEN. I read them from the inspector's report. I will say this, that Mr. Lewis has later testified at a hearing, and a copy of the hearing is here, that he discovered in that report some institutions that he had never heard of before. He did not know they were in existence. He had never heard of some of the institutions that he was charged with being the owner and proprietor of.

Mr. TOWNER. It is a matter of record that the Lewis Publishing Co. and some of these other companies to which I have referred have been in the courts, is it not?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. And, as I understand it, some of these cases are now pending and some of them have reached a final decision?

Mr. MADDEN. I do not recall that any of them has reached a final decision. There is one pending that was decided by the court of appeals on August 20 last, and it is on appeal to the Supreme Court.

Mr. TOWNER. But there have been cases in court and decisions rendered upon these cases, have there not been?

Mr. MADDEN. None that are finally settled that I can recall.

Mr. TOWNER. None of them has been finally settled?

Mr. MADDEN. No, sir.

Mr. TOWNER. Do you mean by that that they are on appeal?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. You are referring now merely to the Lewis Publishing Co.?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. With regard to some of these other companies, have you any knowledge regarding them?

Mr. MADDEN. No, sir.

Mr. TOWNER. You know there has been a decision rendered in this bank case?

Mr. MADDEN. Yes, sir; I read the court's decision in that.

Mr. TOWNER. That was referred to in your testimony yesterday?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. Have you any of the files or records of the final decision in any of these cases?

Mr. MADDEN. I have as to the bank.

Mr. TOWNER. As to any of these other companies?

Mr. MADDEN. I have a printed pamphlet, which the department printed, giving the court's decision in the bank case verbatim, I believe.

Mr. TOWNER. Is that all you have?

Mr. MADDEN. Then I have the court's decision in the criminal case that I mentioned here.

Mr. ALEXANDER. In the case of the United States against E. G. Lewis?

Mr. MADDEN. Yes, sir.

Mr. ALEXANDER. What was that indictment for?

Mr. MADDEN. For fraudulent use of the mails.

Mr. TOWNER. Have you the decision in full?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. Can you furnish it for the committee?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. Can you tell what cases are now pending against the Lewis Publishing Co. or any other of the companies I have referred to?

Mr. MADDEN. I should roughly guess that there are about 25 or 30 cases involved, but I do not know anything about them except as to this Lewis Publishing Co. case.

Mr. TOWNER. And you can not furnish the committee definite information about them?

Mr. MADDEN. No, sir.

Mr. TOWNER. Are all these cases in the United States court?

Mr. MADDEN. No, sir. I can state this, when this publication appeared in the Post-Dispatch, on May 31, 1905, Mr. Lewis brought suit for libel for \$750,000 and brought it in the State court, or the county court, more probably.

Mr. ALEXANDER. The circuit court?

Mr. MADDEN. I guess that is right. An effort was made to remove the case to the United States court.

Mr. ALEXANDER. It was brought in the State circuit court?

Mr. MADDEN. I can not tell you as to that. It was in the State court of Missouri, but they sought to have it removed to the United States court. The case was seesawing there for some time, and was only decided last Saturday by Judge McPherson, and it was sent back to the State court. Now, at the same time, libel suits were brought against Russell P. Goodwin, James L. Stice, Robert M. Fulton, W. T. Sullivan, the Pulitzer Publishing Co., and Postmaster Wyman. In all these suits, involving \$1,750,000, the same question as to the jurisdiction of the State or United States courts was raised. Judge McPherson had the matter under consideration for a considerable time, and then decided to send them all back to the State circuit court, which was done. That decision was rendered last Saturday. These are the cases pending, and it is a singular coincidence that they should have been taken up just as this hearing was going on. The judge had these questions of jurisdiction under consideration for three years, and has decided only that question. It is a peculiar circumstance that it should have happened at this time.

Mr. ALEXANDER. And the cases are now pending in the State court?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. This is what I would like to know—whether in some way or other the committee can obtain information or knowledge of where these cases are pending and what they are. Can you tell the committee how such information can be obtained?

Mr. MADDEN. Yes, sir; I can send out there and get it. I have here with me certified copies of all the suits, criminal and civil, from the records of the United States circuit court and the United States district court up to the time I left. No, sir; excuse me, it is not here, but I will get it for the committee.

Mr. TOWNER. If you will hand them to the committee, I will be glad to look them over.

Mr. MADDEN. I will do so. I will bring them this afternoon.

Mr. TOWNER. I want to ask you whether or not you have in consecutive form the communications that the Lewis Publishing Co. addressed to the Post Office Department and their replies from the commencement of this controversy down to the present time?

Mr. MADDEN. I believe I have all of them. I have all that I know of, except some very immaterial matters that I did not think important enough to encumber the record with.

Mr. TOWNER. Can you furnish us this information complete?

Mr. MADDEN. Yes, sir; complete so far as I know. I do not know of any outside of what I have.

Mr. TOWNER. And you will furnish this for the committee?

Mr. MADDEN. I anticipate putting them in the record.

Mr. ALEXANDER. Mr. Madden, you may proceed with your statement.

Mr. MADDEN. Before leaving off yesterday, we had reached the point of the inspector's report and the exhaustive inquiry into the publications' methods having been considered by the Third Assistant Postmaster General, and the hearing on June 17 on the right of the publications to continue in the second class. Also, the report to the Postmaster General, dated July 8, showing that in the judgment of the Third Assistant Postmaster General there was no proper occasion for disturbing the status of the publications, and complaining of the irregularities that had characterized the work so far. On July 12 the Postmaster General had apparently agreed as to the irregularities, and transferred the case back to the Third Assistant Postmaster General, but forbidding him from making known the decision, in the regular way, which had been made upon the hearing of June 17. I think we got along that far yesterday.

It has been previously explained that a reform of the abuse of the second class was under way. It was the conception and work of the Third Assistant. It was alleged that there were many abuses in what was known as the mail-order class of publications. Under the statute, mail-order publications which complied with the standards fixed are as much entitled to be mailed as second-class matter as any others. They had been so mailed since the passage of the act. Practically all of the general magazines are mail-order publications.

It happened that at about this time a number of publishers of these publications were negotiating with the department for a publication of the rules under which the department proposed to operate;

that is to say, the rules under which it would determine whether a publication was or was not of the second class, or whether or not it had a legitimate list of subscribers, which is a requirement of the law. At that time the courts of the District of Columbia had enjoined the department from proceeding in about 19 different cases.

The publishers had engaged as attorneys to appear for them the Hon. J. H. Bromwell and Lucius Weinschenk. Mr. Bromwell was an ex-Member of Congress, and of the Post Office Committee in the House of Representatives. The outcome of their negotiations was the formal presentation of the matter in writing to the Third Assistant Postmaster General. The communication was dated June 29, 1905. It proposed that the injunction cases should be dismissed in consideration of the department publishing its rules for the guidance of publishers and that an opportunity should be given them to comply. It was not the intention of anyone to violate the law knowingly. The purpose was to avoid a sudden application of new reform rules and action under them which might be destructive of the publishing enterprises, when a knowledge of the rules and an opportunity to conform would save them.

Conferences had been held with the Postmaster General and the Third Assistant. The proposition of the publishers was reasonable and fair, and was agreed to by both the Third Assistant and the Postmaster General.

I submit a compared copy of the letter of Messrs. Bromwell and Weinschenk, dated June 29, 1905, and the response of the Postmaster General, dated July 19, 1905, both as one Exhibit No. 9-10.

EXHIBIT No. 9.

WASHINGTON, D. C., *June 29, 1905.*

To the Honorable The THIRD ASSISTANT POSTMASTER GENERAL:

Representing the various plaintiffs in the injunction proceedings now pending in the Supreme Court of the District of Columbia, in which the Sawyer Publishing Co., W. H. Gannett (Inc.), Lane's List, and the G. W. Willis Publishing Co. are complainants, and Henry C. Payne as Postmaster General, is defendant, we submit the following proposition for the purpose of closing up said litigation and having said cases finally disposed of:

1. We will, through the attorney of record for complainants, consent to the dismissal of said cases.

2. We will, through said attorney of record, agree to and indorse any proper decree that may be prepared and submitted to us for examination and approval.

3. We will, through said attorney of record, in case you shall desire to obtain a formal finding and opinion of the court upon any of the issues raised, consent to a suggestion of the death of the defendant, Henry C. Payne, being entered of record in these cases and a revivor of the actions by substitution of the name of George B. Cortelyou, the present Postmaster General, as a party defendant, and will then agree that the court may proceed to make such finding as it may think proper.

4. Each of the above propositions is subject to the condition and understanding that any order heretofore made by you, excluding from the privilege of the second class any of the parties plaintiff in said action or any other persons or publications engaged in what is known as mail-order publication business, whether parties to these cases or not, and based upon any former hearing had within one year prior to the commencement of the injunction proceedings in the cases mentioned, shall be set aside and no further action taken thereunder; and that before any further steps or action shall be taken by you in that behalf against any of so-called mail-order publications, or their owners, proprietors, or publishers, now enjoying the privilege of the second-class rate of postage, they shall be entitled to a proper hearing at any time after January 1, 1906, and that pending such hearing said publications, their owners, proprietors, and publishers may continue in the use of said second-class mail privilege as now allowed.

Yours, very truly,

J. H. BROMWELL.
LUCIUS WEINSCHENK.

EXHIBIT No. 10.

JULY 19, 1905.

J. H. BROMWELL,
LUCIUS WEINSCHENK,
Counsel, Sawyer Publishing Co. et al., Washington.

GENTLEMEN: Careful consideration has been given to the proposition in your letter of June 29, addressed to the Third Assistant Postmaster General, in relation to the pending injunction proceedings brought in the Supreme Court of the District of Columbia by the Sawyer Publishing Co., a corporation, William H. Gannett, publisher, a corporation, The George W. Willis Publishing Co., and Lane's List (Inc.), a corporation, against the Postmaster General.

You are informed that the department is unable to enter into any understanding or agreement with respect to the disposition of the pending cases, which involves, or is conditional upon, any promise on its part whatsoever. If the publishers concerned desire of their own motion to dismiss the suits now pending against the Postmaster General, no objection will be interposed.

As a part of the general policy and practice of the department and quite independent of the dismissal of the suits, it is and has been the intention of the department to conduct an inquiry as to the present right of each of these publications now enjoying the second-class privilege under these injunctions apart from the inquiries and hearings instituted prior to the injunction proceedings. Before conducting these inquiries (in which, of course, there will be a statutory hearing in respect of each publication) the department will endeavor to formulate and publish in general terms such explanations of the construction placed upon the terms "designed primarily for advertising purposes, or for free circulation, or for circulation at nominal rates" and "legitimate list of subscribers" as the nature of the subject will permit. But it must be distinctly understood that the department will decide each case upon its merits as developed by the facts in evidence.

So far as may be consistent with this duty of determining the issues of fact in each case, rules will be framed which may be serviceable as guides to publishers, and there is no objection to allowing a reasonable time before the rigid enforcement of such rules will be insisted upon. You suggest that January 1, 1906, would be a proper date, and in view of the circumstances the suggestion is considered a reasonable one.

From the foregoing it is not to be understood that the department will fail to act before January 1 upon any specially flagrant case of an abuse of the second-class privilege where the interests of the Government require prompt action. This, however, is not intended to imply that any one of the publications involved in the injunction proceedings is regarded as specially flagrant, but merely that the department reserves entire liberty of action as to such cases.

Respectfully,

GEO. B. CORTELYOU,
Postmaster General.

I quote the following from the letter of the Postmaster General. This letter, be it understood, was prepared for his signature by the Third Assistant:

As a part of the general policy and practice of the department and quite independent of the dismissal of the suits, it is and has been the intention of the department to conduct an inquiry as to the present right of each of these publications now enjoying the second-class privilege under these injunctions, apart from the inquiries and hearings instituted prior to the injunction proceedings.

I would like to interject a statement here. These injunctions had been standing for some years, I think in all, three years—over two years, anyway—and naturally in the course of the publishing business the whole situation may change in that time, and it would not be fair for the department to take the previous investigations which brought about the injunctions and act upon the business at that time. That is why it is stated here that further investigations, if necessary, would be instituted to determine whether they complied, and not to depend upon the old investigations.

Before conducting these inquiries (in which, of course, there will be a statutory hearing in respect to each publication) the department will endeavor to formulate and publish in general terms such explanations of the construction placed upon the

terms "designed primarily for advertising purposes, or for free circulation or for circulation at nominal rates" and "legitimate list of subscribers" as the nature of the subject will permit. But it must be distinctly understood that the department will decide each case upon its merits as developed by the facts in evidence.

So far as may be consistent with this duty of determining the issues of fact in each case, rules will be framed which may be serviceable as guides to publishers, and there is no objection to allowing a reasonable time before the rigid enforcement of such rules will be insisted upon. You suggest that January 1, 1906, would be a proper date, and in view of the circumstances the suggestion is considered a reasonable one.

Now, the situation up to date was that the rules of the department were to be published for the guidance of publishers and time was to be allowed before the rigid enforcement thereof. This was all the publishers sought to obtain. Of course the rules and the time for compliance must apply to all publications, and not to those only which were represented by Messrs. Bromwell and Weinschenk. Any other course would be unlawful, for the department had no authority of law to make exceptions. The rules must be uniformly applied. It must be true, too, that as the matter stood, and until the rules were published, whatever practices were in vogue, unless they constituted a flagrant violation of law, were not objected to for the time being.

Two days later, July 21, 1905, the Third Assistant Postmaster General sent the following letter, or "memorandum," as it was called, to the Postmaster General. This communication shows that the Third Assistant construed the promise to Bromwell and Weinschenk to apply to the *Woman's Magazine* and the *Woman's Farm Journal*, and that the "usual lines" of practice, to which the Postmaster General had referred in his letter of July 12, were outlined in the Postmaster General's letter of July 19 to Messrs. Bromwell and Weinschenk:

JULY 21, 1905.

Memorandum for the Postmaster General.

Case: *Woman's Magazine* (C. D. No. 26575) and *Woman's Farm Journal* (C. D. No. 58208), published at St. Louis, Mo., by the Lewis Publishing Co.

Gen. CORTELYOU:

In pursuance of the direction in your memorandum of July 12 to have investigation of the foregoing cases (*Woman's Magazine* and *Woman's Farm Journal*) made along the usual lines pursued by this bureau, I have assigned them to be investigated in connection with the other mail-order publications covered by your letter of July 19 to Messrs. Bromwell and Weinschenk, which outlines the policy of dealing with the class to which they belong. In the meanwhile the present status is, as you direct, left unchanged and no instructions given to the postmaster at St. Louis.

Very respectfully,

EDWIN C. MADDEN,
Third Assistant Postmaster General.

The Postmaster General made no response to this communication. The silence was properly construed as acquiescence.

The statement has already been made that insidious methods were employed in this case to accomplish the desired results. If the truth thereof is not already established, what follows will surely do so.

So far, then, the right of the publishing company to mail the *Woman's Magazine* and *Woman's Farm Journal* had been disposed of, unless it should be found later that they violated the rules yet to be framed and published. The Third Assistant proceeded with the drafting of the rules. It was vacation time. Nothing definite was accomplished until September of that year.

The original draft of the rules was sent to the Postmaster General some time early in September. He sent them to the Assistant Attorney General for the Post Office Department for review. There were a number of conferences on the subject and some changes in the draft. When finally rounded out, they represented the wisdom of the Postmaster General, the Assistant Attorney General for the Post Office Department, the Third Assistant, and his special assistant attorney.

On October 14, 1905, the final draft of these rules had for some time been in the possession of the Postmaster General for O. K. before publication.

I might explain at this point that these rules were to be issued over the signature of the Third Assistant Postmaster General.

On that date the Third Assistant received a communication from the Lewis Publishing Co. at St. Louis complaining that the post-office authorities were again at its books and papers.

It will be remembered that on July 12 previous the Postmaster General had apparently consented the handling of the case along the "usual lines." The "usual lines" were in the Bromwell-Weinschenk agreement to formulate and publish for the guidance of publishers the rules under which the department would operate. In the meantime, publishers were to continue in existing practice. It will be remembered, too, that at the hearing June 17, 1905, as the record shows, the company had agreed to make any change in its practices or its publications to which the department objected. So far as it knew, it was doing no differently from other publications with whom no fault was found. The hearing on June 17, 1905, disclosed no reason to find fault with them. The Postmaster General accepted the finding, but directed that no notice be given. Receiving no word from the department or the local postmaster as to the decision made upon the hearing, the company was bound to assume that it was not seriously at fault or that the matter was still pending.

This move upon the company, then, while the Postmaster General was holding up the publication of the rules promised Bromwell and Weinschenk could have but one meaning—the program for concerted action having failed, the purpose was to be carried out by another process.

Mr. AUSTIN. Do you say he was holding up the publication of the rules?

Mr. MADDEN. Yes, sir.

Mr. AUSTIN. Do you say he was doing that deliberately?

Mr. MADDEN. I do not say that he was doing it deliberately. I do not know what was taking place in his office, but, as will appear later, his attention was called to it.

No attempt is made here to characterize this piece of official conduct. The facts speak for themselves.

Without putting it in that exact language, the Third Assistant on October 14, the date of the receipt of the company's letter, dispatched it to the Postmaster General with a sharp letter of transmittal. Prior to this, it was supposed that the Postmaster General had followed a mistaken course, and that on July 12 he had come to a realization of it.

Owing to its importance, I read the memorandum in full:

Memorandum for the Postmaster General.

OCTOBER 14, 1905.

Gen. CORTELYOU:

Within the last half hour I have received a special delivery letter from Mr. E. G. Lewis, publisher of the Woman's Magazine and the Woman's Farm Journal, of St. Louis. The following is a copy of the letter.

OCTOBER 12, 1905.

Hon. EDWIN C. MADDEN,

Third Assistant Postmaster General, Washington, D. C.

DEAR SIR: At 6 p. m. last night (October 11), we received second class entry blanks from the postmaster of St. Louis with a demand that they be completely filled out and returned by this evening (October 12). Some of the questions asked would require weeks to give accurate answers, necessitating the sorting out of over a million original subscriptions and letters separating the club subscriptions from full subscriptions.

We have information that leads us to believe that false and perjured testimony has been given by a hired spy, gotten into our subscription rooms for that purpose, in regard to our subscriptions. I do not know the purpose of this sudden demand, but I have perfect faith that in your department no action will be permitted that savors of persecution while you are at the head of it, and I simply take the liberty of advising you of this matter so that we will get a square deal.

Respectfully,

(Signed) E. G. LEWIS.

I find from investigation that the Classification Division, where action of the kind complained of would originate, did not initiate this action. The postmaster must, therefore, be moving of his own volition or under the direction of some other officer.

The Lewis publications are of the mail-order type, many of which are alleged to be abuses of the second-class privilege because of being "designed primarily for advertising purposes, or for free circulation, or for circulation at nominal rates." A definite plan or policy for dealing with the abuses in this class has lately been determined upon as one of the features of the general reform of abuses of the second class of mail matter. It was the result of conferences between the publishers and the Third Assistant Postmaster General and yourself, one of the features of which was the promised publication of the circular regarding lists of subscribers, etc., which is now in your hands. The design of this circular is the enunciation of definite rules for dealing in a uniform manner with all questions of this kind.

There is nothing in the law prohibiting mail-order papers as such. Many of the recognized magazines are commonly charged to be of that type. The rules heretofore in effect have not furnished any satisfactory and effective guide capable of uniform and general application upon the question of primary design, free circulation, or circulation at nominal rates. Unless such rules and the practice upon them be general and uniform in their operation, they manifestly can not stand either the test of public criticism or judicial scrutiny.

Throughout my dealing with this class of cases, and for that matter with all others, it has been my aim to avoid the slightest appearance of persecution or precipitate action of any kind whatever by the singling out of one publisher for treatment in advance of those in his class. It is this policy which is the cornerstone of the reform; without it we could not have succeeded. As it is, there is no publisher able to sustain, with the smallest fragment of evidence, the charge that he has been unjustly treated, or treated in any different manner than all those in a similar situation. Temperate and judicial treatment must characterize this work in order to make it successful.

The action mentioned in Mr. Lewis's letter was not initiated by this office, to which, by the Postal Laws and Regulations, has been assigned the duty of dealing with the classification of mail matter. In my memorandum of July 8 last, relative to the prior action, which likewise was not initiated by this office, I suggested that if you wished an investigation might be carried on here in harmony with the general practice. To this you assented in a memorandum dated July 12; and later in response to my verbal inquiry, you stated that you did not care to have the case taken up out of its natural order. In view of this, I am somewhat at a loss to know how to answer Mr. Lewis's inquiry, and shall await your instructions.

Respectfully,

EDWIN C. MADDEN,
Third Assistant Postmaster General.

The Postmaster General made no response to this October 14 communication.

Under date of November 11, the postmaster at St. Louis came into the case for the first time. He then addressed a communication to the Third Assistant. This communication recites the record of his office as to the entry of the Woman's Magazine and Woman's Farm Journal to the second-class, and gives it as his opinion that both are abuses. He gives tabulated information as to the number of copies which had just been mailed of the October issue of the Woman's Farm Journal. His conclusion is that the Government is losing revenue, because the company is mailing too many copies. He advises that he proposes to send a like report on the case of the Woman's Magazine, which is to begin mailing on the 20th of the month, and calls for early instructions "to prevent further loss to the Government in connection with the mailings of the next issues" of both magazines.

The Third Assistant, on November 23, sent this letter of the postmaster at St. Louis to the Postmaster General with a pointed letter of transmittal. Compared copies of the letter of the St. Louis postmaster to the Third Assistant, and the Third Assistant's letter of transmittal to the Postmaster General, dated November 23, are herewith submitted in one, marked "Exhibit No. 20."

Among other things, it appears from this letter of the St. Louis postmaster that he had been circularizing the postmasters of the country concerning these magazines. It shows how he figured out his conclusions as to the Woman's Farm Journal, and after calling "for immediate and decisive action on the part of the department," concludes as follows:

For the reasons above stated, and because I deem it my duty to no longer remain silent in this matter, I have made this report, and ask for instructions as to further action prior to the next mailings of these publications.

The inspectors have made various inquiries of me, touching the case, from which I assume that additional facts can be obtained by inquiry made to the honorable chief inspector.

The Woman's Magazine begins its mailing on the 20th of each month, and the Woman's Farm Journal about the 1st of each month, and early instructions will be necessary to prevent further loss to the Government in connection with the mailings of the next issues.

MR. AUSTIN. Who signed that?

MR. MADDEN. That is from the postmaster at St. Louis; that is a quotation from his letter.

MR. AUSTIN. Postmaster Wyman?

MR. MADDEN. Yes, sir.

MR. AUSTIN. A brother of the Surgeon General?

MR. MADDEN. Yes, sir.

The following is taken from the Third Assistant's letter of transmittal to the Postmaster General:

It appears that the postmaster has instituted, apparently on his own motion, an investigation with regard to these two publications, and on the result he ventures the opinion that both are abuses of the second-class mailing privilege.

MR. AUSTIN. Do you not think it was the duty of the postmaster at St. Louis, if he thought or believed it to be in the interest of the service, to report that matter?

MR. MADDEN. Yes, sir.

MR. AUSTIN. That is evidently what he did in this case?

Mr. MADDEN. I think before you are through, however, you will find that the inspectors wrote that letter for him. He testified that he did not write the letter in the case.

Mr. AUSTIN. There would be no difference, whether it was the act of the inspector or of the postmaster; if the inspector thought there was an abuse of the postal laws and regulations there, it was his duty to report it.

Mr. MADDEN. That would be all right in the ordinary course of business, but I have called attention to the irregularities in this case and the purpose to injure this publishing company by hook or crook. On July 12, it was turned over to the Third Assistant Postmaster General to be handled along usual lines. The inspectors had disappeared from the case. Now the postmaster appeared.

Mr. AUSTIN. Now, here were sworn representatives of the Government, in the service of the Post Office Department—that is, the postmaster at St. Louis and these inspectors—they were all charged with a faithful performance of duty, and if they knew of anything that they had reason to believe was an abuse or violation of the postal laws and regulations, it was their duty to report it. They were on the ground, and were in a position to know of these alleged violations, while the Third Assistant Postmaster General was in Washington, hundreds of miles away, here in the department.

Mr. MADDEN. In ordinary good faith that would be very proper and very regular.

The following is taken from the Third Assistant Postmaster General's letter of transmittal to the Postmaster General:

My views with regard to the status of these publications have already been made known to you in several other memoranda. In reply you directed that the two cases should take their course in the class to which they belong; and that accords with my own view as to what is best to be done.

As a part of his procedure the postmaster has caused inquiries to be made by other postmasters to ascertain whether or not persons to whom copies of the publications have been mailed are subscribers in fact. This is the only instance of record where a postmaster has taken such action. A copy of the postmaster's form of inquiry is attached.

I do not consider it best for me to take any action on this letter from the postmaster until you have seen it and determined what, under the unusual circumstances, should be done with regard to it. Please direct me.

Mr. AUSTIN. There you make objection to what you have already virtually admitted; that is, that the postmaster had a right to do this as a sworn officer. Yet you take exception to it.

Mr. MADDEN. I took this stand: I was perfectly satisfied by that time that it was not the purpose to deal squarely and honestly with this publishing company, and I washed my hands of the whole thing. I sent all the communications I received direct to the Postmaster General, and he replied to none of them for five months.

Mr. AUSTIN. What reasons did he give?

Mr. MADDEN. He never gave any. He always turned the subject when I approached him. Now, we are coming down to the interesting part of it.

EXHIBIT No. 11.

POST OFFICE, ST. LOUIS, MO.,
OFFICE OF THE POSTMASTER,
September 31, 1906.

[Personal.]

To my brother postmasters:

The department has before it a case of unusual gravity, and while you may have heretofore received similar letters, it is of paramount importance that you respond to this one, as its relation to the case is more vital than any others.

I therefore strenuously urge that a careful and prompt response be sent me, with the fullest possible information, as I am following the department's directions and am compelled to seek your aid, as stated.

Very respectfully,

FRANK WYMAN, *Postmaster*.

POST OFFICE, ST. LOUIS, MO.,
OFFICE OF THE POSTMASTER.

Postmaster, ———.

SIR: The department has been informed that ———, a patron of your office, acted as agent for the Woman's Magazine, published at St. Louis, Mo., sending in lists of subscriptions to the company during the year 1906.

It is desired that detailed information be obtained as to the following specific number of subscriptions being ———, among them appearing the two following names and addresses: ———.

The information sought is of the utmost importance to the department, and it is desired that you secure same from the agent personally, if possible, and return to me with as little delay as possible.

Very respectfully,

FRANK WYMAN, *Postmaster*.

Give date (month and day) this list was sent to the Lewis Publishing Co. ———.

What amount was remitted with list? ———.

How was remittance made? Money order, express order, currency, stamps, or how? If money order, give date shown by your records. ———.

Did agent win a prize under this offer? —.

(Postmaster or carrier.)

(Agent's signature.)

POST OFFICE, ST. LOUIS, MO.,
OFFICE OF THE POSTMASTER,
St. Louis, Mo., ———, ———.

Postmaster, ———.

SIR: The attached explains itself. It is important that we secure the information asked for. Please endeavor to obtain this information and return both these letters, with your reply, in the envelope herewith with as little delay as possible.

Respectfully,

FRANK WYMAN, *Postmaster*.

[Attached.]

POST OFFICE, ST. LOUIS, MO.,
OFFICE OF THE POSTMASTER,
———, ———.

Postmaster, ———.

SIR: Please interview the below-named patron of your office and obtain answers to the inquiries concerning his (or her) subscription to the Woman's Magazine, published at St. Louis, Mo.

Your prompt attention is desired, and it is preferred, where practicable, that party make statement of facts in writing in blank spaces provided below.

This communication should be considered strictly confidential, and special effort should be made to have the information, with return of this letter, reach this office with least possible delay.

Very respectfully,

FRANK WYMAN, *Postmaster*.

———, ———, ———.

1. When did you first subscribe for the Woman's Magazine? Give year and month

2. About what month in the year 1905 did you renew your subscription to the Woman's Magazine? ———

3. Give total amount paid for subscription and renewals to the *Woman's Magazine* prior to the renewal in 1905 _____

4. Was the *Woman's Magazine* received regularly up to the time of the renewal in 1905? If not regularly, state how often _____

Attest: _____

(Postmaster or carrier.)

If removed, insert present address here _____

(Signature of party giving information.)

POST OFFICE, ST. LOUIS, MO.,
OFFICE OF THE POSTMASTER,
St. Louis, Mo., _____, _____.

Postmaster, _____.

SIR: Please ascertain from the below-named patron of your office whether he (or she) subscribed for the *Woman's Magazine*, published at St. Louis, Mo.

Your prompt attention is desired, and it is preferred, where practicable, that party make statement of facts in writing in blank spaces provided below. (Any information obtainable concerning the circumstances of the subscription to this paper, other than provided for in the inquiries below, please supply on bottom of this letter, under "Special note.")

It will not be necessary for you to state further than that this information is desired by the department.

This communication should be considered strictly confidential, and special effort should be made to have the information with return of this letter, reach this office with least possible delay.

Very respectfully,

FRANK WYMAN, *Postmaster*.

1. Did you subscribe or renew your subscription to the *Woman's Magazine* during the year 1904? If so, give month and date, and amount paid _____.

2. If not subscribed for or renewed during 1904, but previous thereto, give month and year, and amount paid _____.

3. If renewed in 1905 or 1906, give year, month, and day _____.

4. Have you received it regularly up to the present time? _____.

Attest: _____

(Postmaster or carrier.)

If removed, insert present address here _____.

Special note: _____.

(Signature of party giving information.)

POST OFFICE, ST. LOUIS, MO.,
OFFICE OF THE POSTMASTER,
August, 1906.

Postmaster, _____.

SIR: Please ascertain from the below-named patron of your office whether he (or she) subscribed for the *Woman's Magazine*, published at St. Louis, Mo. Your prompt attention is desired, and it is preferred, where practicable, that party make statement of facts in writing in blank spaces provided below. (Any information obtainable concerning the circumstances of the subscription to this paper, other than provided for in the inquiries below, please supply on bottom of this letter, under "Special note.")

It will not be necessary to state further than that this information is desired by the department.

This communication should be considered strictly confidential, and special effort should be made to have the information with the return of this letter reach this office with least possible delay.

Very respectfully,

FRANK WYMAN, *Postmaster*.

1. Did you subscribe or renew your subscription to the Woman's Magazine during the year 1905? If so, give month and day and amount paid _____.

2. If not subscribed for or renewed during 1905, but previous thereto, give month and year, and amount paid _____.

(Signature of party giving information.)

Attest: _____

(Postmaster or carrier.)

If removed, insert present address here _____.

Special note: _____

POST OFFICE, ST. LOUIS, MO.,
OFFICE OF THE POSTMASTER,
St. Louis, Mo., _____.

Postmaster, _____.

SIR: Please ascertain from the below-named patron of your office whether he (or she) subscribed for the Woman's Magazine, published at St. Louis, Mo.

Your prompt attention is desired, and it is preferred, where practicable, that party make statement of facts in writing in blank spaces provided below. (Any information obtainable concerning the circumstances of the subscription to this paper, other than provided for in the inquiries below, please supply on the bottom of this letter, under "Special note.")

It will not be necessary for you to state further than that this information is desired by the department.

This communication should be considered strictly confidential, and special effort should be made to have the information with return of this letter reach this office with least possible delay.

Very respectfully,

FRANK WYMAN, *Postmaster.*

1. Did you subscribe or renew your subscription to the Woman's Magazine during the year 1905? If so, give month and day, and amount paid. _____.

2. If not subscribed for or renewed during 1905, but previous thereto, give month and year, and amount paid. _____.

3. If renewed in 1906, give month and day. _____.

4. Have you received it regularly up to the present time? _____.

(Signature of party giving information.)

Attest: _____

(Postmaster or carrier.)

If removed, insert present address here: _____.

Special note: _____

POST OFFICE, ST. LOUIS, MO.,
OFFICE OF THE POSTMASTER,
St. Louis, Mo., March 15, 1906.

Postmaster, _____.

SIR: Please ascertain from the below-named patron of your office whether he (or she) subscribed for the Woman's Farm Journal, published at St. Louis, Mo., and whether or not the Journal has been regularly received up to the present time, and particularly since the subscription expired. Your prompt attention is desired, and it is preferred, where practicable, that party make statement of facts in writing in blank spaces provided below.

It will not be necessary for you to state further than that this information is desired by the department. This communication should be considered strictly confidential, and special effort should be made to have the information with return of this letter reach this office with least possible delay.

Very respectfully,

(Stamped) FRANK WYMAN,
Postmaster.

About what date (month and year) did you subscribe for the *Woman's Farm Journal*? _____.

About what date (month and year) was your last renewal paid _____.

Have you received it regularly up to the present time? _____.

Have you received it regularly since your subscription expired? If not regularly, state how often. _____.

(Party receiving Journal sign here.)

Attest: _____.

(Postmaster or carrier.)

If removed, insert present address here: _____.

POST OFFICE, ST. LOUIS, MO.,
EXECUTIVE DIVISION.

To the postmasters:

For the information of my brother postmasters, I will state that the information desired on attached form is of vast importance to the service and is being asked for under provisions of paragraph 6, section 456, Postal Laws and Regulations.

It devolves upon me under that section to learn whether its provisions have been violated, and I have been instructed by officers of the department to take this means of developing the facts.

FRANK WYMAN, *Postmaster*.

POST OFFICE, ST. LOUIS, MO.,
OFFICE OF THE POSTMASTER,
St. Louis, Mo., _____.

POSTMASTER, _____.

SIR: Please ascertain from the below-named patron of your office whether he (or she) ever subscribed for the *Woman's Farm Journal*, published at St. Louis, Mo. Your prompt attention is desired, and it is preferred, where practicable, that the party make statement of facts in writing in the blank spaces provided for same on the back of this letter.

If the party states they are not now, and never have been, a subscriber of this publication, you will please instruct them to answer questions 1, 2, and 3, under the heading "Nonsubscriber."

If the party is or has been a subscriber of this publication, you will please instruct him to answer questions 1 to 10, under the heading "Subscriber or former subscriber."

I wish to impress upon you the importance to our service of obtaining the information desired on this sheet and its return to me with the least possible delay.

Very respectfully,

FRANK WYMAN, *Postmaster*.

If removed, insert present address here: _____.

NONSUBSCRIBER.

1. Have you or has anyone for you ever paid for subscription to the *Woman's Farm Journal*? _____
2. Have you ever received copies of this publication? If so, how often? _____
3. State whether or not the wrappers of same were stamped "Sample copy"? _____

SUBSCRIBER OR FORMER SUBSCRIBER.

1. About what date (month and year) did you subscribe for the *Woman's Farm Journal*? _____
2. How many years did you subscribe for? _____
3. What amount of money was paid? _____
4. When was your last renewal paid and for what length of time? _____
5. When did your subscription finally expire? _____
6. Were any copies of the *Woman's Farm Journal* received by you after final expiration of the subscription? _____
7. If so, how many and how often? _____

8. Were they stamped "Sample copy" or not? _____
 9. How many copies have been received by you since October 1, 1905? _____
 10. Were they stamped "Sample copy" or not? _____

(Party making statement sign here.)

Attest: _____

(Postmaster or carrier.)

POST OFFICE, ST. LOUIS, MO.,
 OFFICE OF THE POSTMASTER,
 St. Louis, Mo., October —, 1906.

Postmaster, _____.

SIR: Please ascertain from the below-named patron of your office whether he (or she) subscribed for the Woman's Farm Journal, published at St. Louis, Mo., and whether or not the Journal has been regularly received up to the present time, and particularly since the subscription expired. Your prompt attention is desired, and it is preferred, where practicable, that party make statement of facts in writing in blank spaces provided below.

It will not be necessary to state further than that this information is desired by the department.

This communication should be considered strictly confidential, and special effort should be made to have the information, with return of this letter, reach this office with least possible delay.

Very respectfully,

FRANK WYMAN, *Postmaster.*

About what date (month and year) was your last renewal paid? _____
 Have you received it regularly since your subscription expired? If not regularly, state how often. _____

(Party receiving Journal sign here.)

Attest: _____

(Postmaster or carrier.)

If removed, insert present address here. _____

POST OFFICE, ST. LOUIS, MO.,
 OFFICE OF THE POSTMASTER,
 St. Louis, Mo., August —, 1906.

POSTMASTER, _____.

SIR: Please ascertain from the below-named patron of your office whether he (or she) subscribed for the Woman's Farm Journal, published at St. Louis, Mo.

Your prompt attention is desired, and it is preferred, where practicable, that party make statement of facts in writing in blank spaces provided below. (Any information obtainable concerning the circumstances of the subscription to this paper, other than provided for in the inquiries below, please supply on bottom of this letter, under "Special note.")

It will not be necessary for you to state further than that this information is desired by the department.

This communication should be considered strictly confidential, and special effort should be made to have the information with return of this letter reach this office with least possible delay.

Very respectfully,

FRANK WYMAN, *Postmaster.*

- _____, _____.
1. Did you subscribe or renew your subscription to the Woman's Farm Journal during the year 1904? If so, give month and day, and amount paid. _____
 2. If not subscribed for or renewed during 1904, but previous thereto, give month and year, and amount paid. _____
 3. If renewed in 1905 or 1906, give year, month, and day. _____
 4. Have you received it regularly up to the present time? _____

(Signature of party giving information.)

Attest: _____

(Postmaster or carrier.)

If removed, insert present address here: _____

Special note: _____

POST OFFICE, ST. LOUIS, MO.,
OFFICE OF THE POSTMASTER,
August —, 1906.

Postmaster, _____.

SIR: Please ascertain from the below-named patron of your office whether he (or she) subscribed for the Woman's Farm Journal, published at St. Louis, Mo.

Your prompt attention is desired, and it is preferred where practicable that party make statement of facts in writing in blank spaces provided below. (Any information obtainable concerning the circumstances of the subscription to this paper, other than provided for in the inquiries below, please supply on bottom of this letter under "Special note.")

It will not be necessary for you to state further than that this information is desired by the department.

This communication should be considered strictly confidential, and special effort should be made to have the information, with return of this letter, reach this office with least possible delay.

Very respectfully,

FRANK WYMAN, *Postmaster.*

- _____, _____.
1. Did you subscribe or renew your subscription to the Woman's Farm Journal during the year 1905? If so, give month and day and amount paid. _____
 2. If not subscribed for or renewed during 1905, but previous thereto, give month and year, and amount paid. _____
 3. If renewed in 1906, give month and day. _____
 4. Have you received it regularly up to the present time? _____

(Signature of party giving information.)

Attest: _____

(Postmaster or carrier.)

If removed, insert present address here. _____

Special note. _____

POST OFFICE, ST. LOUIS, MO.,
OFFICE OF THE POSTMASTER,
August —, 1906.

POSTMASTER, _____.

SIR: Please ascertain from the below-named patron of your office whether he (or she) subscribed for the Woman's Farm Journal, published at St. Louis, Mo. Your prompt attention is desired, and it is preferred, where practicable, that party make statement of facts in writing in blank spaces provided below. (Any information obtainable concerning the circumstances of the subscription to this paper, other than provided for in the inquiries below, please supply on bottom of this letter, under "Special note.")

It will not be necessary to state further than that this information is desired by the department.

This communication should be considered strictly confidential, and special effort should be made to have the information with return of this letter reach this office with least possible delay.

Very respectfully,

FRANK WYMAN, *Postmaster.*

_____,
_____,
_____.

1. Did you subscribe or renew your subscription to the Woman's Farm Journal during the year 1906? If so, give month and day, and amount paid. _____.

2. If not subscribed for or renewed during 1906, but previous thereto, give month and year and amount paid. _____.

3. Have you received it regularly up to the present time? _____.

(Signature of party giving information.)

Attest: _____.

If removed, insert present address here. _____.

Special note: _____.

POST OFFICE, ST. LOUIS, MO.,
OFFICE OF THE POSTMASTER,
St. Louis, Mo., August 27, 1906.

POSTMASTER, _____.

SIR: The department has been informed that _____, a patron of your office, acted as agent for the Woman's Farm Journal, published at St. Louis, Mo., competing for a prize under the thousand-dollar-contest offer, to agents sending in the largest number of subscriptions before May 31, 1906.

It is desired that detailed information be obtained as to the following specific list of subscriptions sent in, the number of subscriptions being 20, among them appearing the two following names and addresses:

The information sought is of the utmost importance to the department, and it is desired that you secure same from the agent personally, if possible, and return to me with as little delay as possible.

Very respectfully,

FRANK WYMAN,
Postmaster.

Give date (month and day) this list was sent to the Lewis Publishing Co. _____.
What amount was remitted with list? _____. How was remittance made; money order, express order, currency, stamps, or how? _____. If money order, give data shown on your records. _____.

Did agent win a prize under this offer? _____.

(Agent's signature.)

(Postmaster's or carrier's.)

POST OFFICE, ST. LOUIS, MO.,
OFFICE OF THE POSTMASTER,
August —, 1906.

POSTMASTER, _____.

SIR: Please ascertain from the below-named patron of your office whether he (or she) subscribed for the Woman's Farm Journal, published at St. Louis, Mo.

Your prompt attention is desired, and it is preferred, where practicable, that party make statement of facts in writing in blank spaces provided below. (Any information obtainable concerning the circumstances of the subscription to this paper, other than provided for in the inquiries below, please supply on bottom of this letter, under "Special note.")

It will not be necessary to state further than that this information is desired by the department.

This communication should be considered strictly confidential and special effort should be made to have the information with return of this letter reach this office with least possible delay.

Very respectfully,

FRANK WYMAN,
Postmaster.

1. Did you subscribe for the Woman's Farm Journal? If so, please state year and month and amount paid? _____.
2. To whom was the subscription paid? _____.

Attest: _____

(Signature of party giving information.)

(Postmaster or carrier.)

Compared copies of the St. Louis postmaster's circular letters to the postmasters of the country is submitted as Exhibit No. 11. It concerns the Woman's Magazine. The postmaster's letter of November 11 shows that a similar letter had been sent out concerning the Woman's Farm Journal. Attention is directed to the fact that the letter calls upon the postmasters addressed to consider the matter as "strictly confidential," but to make "special effort" to have the information called for reach the postmaster at St. Louis "with the least possible delay." Attention is also directed to the nature of the inquiries which the postmasters are required to make of the parties to whom copies of the magazine are addressed.

Perhaps it would be well to explain here that the post-office inspector force is the secret service of the Postmaster General. In sending in their reports, the inspectors are required to address the chief post-office inspector attached to the Postmaster General's office. In some cases they communicate with the Postmaster General direct. But a post-office inspector never addresses an Assistant Postmaster General. If an Assistant Postmaster General be called upon to act within his jurisdiction on any matter reported upon by an inspector, the papers in the case reach him by reference from the Postmaster General's office. On the contrary, postmasters throughout the country are required by the regulations to deal directly with and correspond directly with the Assistant Postmaster General having jurisdiction of the subject upon which they are calling on the department to act.

Mr. AUSTIN. What do you think about the proposition of transferring the post-office inspectors to the Department of Justice?

Mr. MADDEN. It is a very good one, sir. I highly approve it.

The movement against the publishing company on October 11 was by the same post-office inspectors that conducted the investigation in March previous. However, they were now acting, or purporting to act, on behalf of the postmaster at St. Louis. They were gathering information upon which he should now base this report to the Third Assistant. If the report, later to be placed in evidence, be true, the St. Louis postmaster's letter of November 11 was not written by him or by any one of his subordinates, but was written for him by one of the post-office inspectors, the special representatives of the Postmaster General. This bringing the postmaster into the case at this stage of the proceeding gave the matter some appearance of being handled "along the usual lines pursued by your bureau." The local postmaster could address the Third Assistant direct.

The Postmaster General had not responded to the October 14 letter from the Third Assistant. Now, he did not respond to the latter's communication of November 23, transmitting the St. Louis postmaster's letter of November 11.

The sending of these communications to him was in accord with the Third Assistant's purpose to wash his hands of the whole matter,

unless the Postmaster General should come out in the open with definite instructions which would disclose his purpose.

Many communications from the local postmaster and the public were now coming into the department. They were addressed to the Third Assistant, because the subject was within his jurisdiction. Having repudiated the whole matter, he took no other action than to promptly transmit each to the Postmaster General with a letter of transmittal, as in the case of the St. Louis postmaster's letter of November 11. The files will show a very considerable number of communications so transmitted.

The Postmaster General replied to none. Neither did he mention the subject verbally to the Third Assistant. When the two were together, his attitude and manner forbade the bringing of the subject up. His silence continued from October 14, 1905, until March 22, 1906, a period of five months. In the meantime the Third Assistant was kept in the dark as to the field movements the Postmaster General was directing, but all the while the inspectors and the St. Louis postmaster were active, as what follows shows.

Going back a little, we find that on November 6, 1905, the Postmaster General did, without the knowledge of the Third Assistant, write to President Lewis of the Lewis Publishing Co. A compared copy of this communication, marked "Exhibit No. 12," is submitted.

EXHIBIT No. 12.

NOVEMBER 6, 1905.

MR. E. G. LEWIS,
President the Lewis Publishing Co., St. Louis, Mo.

SIR: Your communications of the 9th and 12th ultimo, with their inclosures, have been received and very carefully considered.

In reply to your communication of the 9th ultimo, I beg to say that the information of the Post Office Department is that the Peoples United States Bank is in the custody and control of Frederick Essen, Esq., acting as its receiver under appointment by the circuit court of St. Louis County, Mo., and that he is proceeding expeditiously, under the direction of the court appointing him, in the settlement and closing of its affairs. It is not understood that the lawful and proper liquidation of the affairs of the institution in any way depends upon the consummation of your plan of obtaining from shareholders the assignment of their shares of stock to you, or that the shareholders would suffer financially by your failure to accomplish that purpose. It was represented that the assignments of shares made to you, and transmitted to the Missouri-Lincoln Trust Co., were procured through misrepresentations, and accordingly steps were taken by the Post Office Department to prevent, if possible, the delivery of those assignments to you until it could be ascertained whether the shareholders making them had understood thoroughly your proposition and acted with knowledge of all the facts in the matter. In so doing this department has not assumed to act as the guardian of the shareholders, but has undertaken merely to perform to the fullest the duty imposed upon it by law. The litigation now in progress in the courts of the State of Missouri seems well calculated to settle the rights of all parties, and action by this department along the lines suggested by you would tend to retard rather than facilitate the proper liquidation and adjustment of the affairs of the bank. However, if this department can be satisfied that in making these assignments the stockholders are acting with knowledge of all the circumstances, and are not in any way misled or deceived, this department will interpose no objection thereto.

In regard to your communication of the 12th ultimo, in which you complain that you have been requested by the postmaster at St. Louis to answer certain questions in respect to the Woman's Magazine and the Woman's Farm Journal, I am informed that the investigation which was at that time instituted has been practically completed.

It need hardly be said that neither the Post Office Department nor any of its officers has the remotest reason to become a party to the persecution of you or any other citizen, and that in no conceivable circumstances would the Postmaster General tolerate such a proceeding.

Any business enterprise in which you may be now engaged or may hereafter enter upon is and will be absolutely secure from interference by this department and its officers so long as it is carried on within the bounds set by law.

Very respectfully,

GEO. B. CORTELYOU,
Postmaster General.

Mr. AUSTIN. I would like to have that go in the record.

Mr. MADDEN. I have it here; I have the original.

It appears that President Lewis had written the Postmaster General under date of the 9th ultimo (Oct. 9) concerning the bank matter. The Postmaster General's letter of November 6 to Lewis is a reply to that. It is also a reply to the communication from President Lewis dated the 12th ultimo. This latter letter is the one addressed to the Third Assistant and embodied by him in the communication of October 14, 1905, to the Postmaster General. The Postmaster General says in his November 6th letter to Lewis—now, do you want the whole of it?

Mr. AUSTIN. Yes, sir. I want to see why he was ignoring you.

Mr. MADDEN. I do not know why.

Mr. AUSTIN. I think I would have found out, if I had been in your place.

Mr. MADDEN. If you could have done better than I did under the unfortunate circumstances, I am sorry that you were not there.

Mr. AUSTIN. The Postmaster General could not have run over me.

Mr. MADDEN. Well, he did not run over me, either.

I will read the letter in full:

[Witness reads Exhibit No. 12.]

The foregoing is an important piece of evidence—an important link in the chain. So far as it relates to the Peoples United States Bank case, it will be sufficient to say in passing, that the "litigation now in progress in the courts of the State of Missouri," to which it refers, and which "seems well calculated to settle the rights of all parties," etc., resulted in the supreme court of the State dislodging the receiver and restoring the bank to its owners. The appointment of the receiver, growing out of the Postmaster General's issuing a fraud order against the bank, was declared to be illegal.

In passing, too, it might be well to direct attention to the extraordinary function which the Postmaster General is performing in this case. Substantially, he says that it is his duty to ascertain whether persons, who are making the assignments of stock to Lewis, are acting with full knowledge of all the circumstances and are not misled or deceived. Of course, this means an inquiry in each individual case. Suppose 80 or 90 per cent have full knowledge of all the circumstances, and therefore, are not misled or deceived; and suppose that 10 or 20 per cent are acting without full knowledge of all the circumstances, and therefore, might claim to be misled or deceived, what then? Will he stop Lewis from receiving the assignments in some cases and not in others? His exact words are:

If this department can be satisfied that in making these assignments stockholders are acting with full knowledge of all the circumstances and are not in any way misled or deceived, the department will interpose no objection thereto.

Mr. AUSTIN. Now, Mr. Madden, the Postmaster General evidently had complaints from some of the stockholders of the bank that Mr. Lewis was deceiving them, that he had been improperly using the

mails in order to do it, and as a result of that he made this order. Is not that the size of it?

Mr. MADDEN. My judgment and opinion about that is he exceeded his authority absolutely; that he had no business undertaking to find out whether or not a person was misled or deceived. His business consisted in determining whether a scheme was a fraud, and if it was a fraud it stopped everything.

Mr. AUSTIN. Suppose you were Postmaster General, and here was a man engaged in business. As you say, 60 or 80 per cent of his letters were legitimate and there was no deception or fraud practiced, but in the other case 20 per cent of fraud was practiced and an improper use of the mails made by the party practicing this fraud. Would you issue a fraud order against him?

Mr. MADDEN. If 80 per cent were not defrauded and 20 per cent thought they were defrauded, I would say it was not a fraud; that they were simply mistaken about it.

Mr. AUSTIN. Then you would permit them to use the mails fraudulently up to the extent of 20 per cent?

Mr. MADDEN. No, sir; I would say this was not a function of the department. If these people had a grievance by having been defrauded by Lewis or any other mortal man, they had a remedy in court.

Mr. AUSTIN. Then you would tie the hands of the Postmaster General in a case of that kind and send the parties to court?

Mr. MADDEN. I would most assuredly tie the hands of the Postmaster General, because, if that is permitted, every transaction by mail is subject to his scrutiny to determine whether the people are satisfied, and whether they know all the circumstances or whether they are misled or deceived.

Mr. REDFIELD. The point as I get it, according to the Postmaster General's letter, is not whether this was or was not essentially fraudulent, but whether these particular correspondents were satisfied in their own minds that it was so.

Mr. MADDEN. That is right.

Mr. REDFIELD. The point is quite different from the essential nature of the fraud. The point is simply as to the personal satisfaction of the correspondents, and if the Postmaster General has this power I do not see what is to prevent him exercising it, to prevent my writing to you, and you not being satisfied with the honorable character of what I say to you—

Mr. AUSTIN (interposing). If the Postmaster General had received complaints or satisfactory evidence that Mr. Lewis or any other party was using the mails in the transmission of his letters, to defraud or deceive, it is his duty to protect the public under the postal laws.

Mr. REDFIELD. Undoubtedly.

Mr. AUSTIN. If that is not the law, it ought to be the law.

Mr. REDFIELD. But it is a case a little bit different. If you think I am writing fraudulent letters to you and others—I can not for a moment consider your thought upon that subject—

Mr. AUSTIN. It is not a question of thought.

Mr. REDFIELD (continuing). I can not conceive that your impression, your satisfaction upon that subject, should be the basis of official action. That is the essence of this case. It is not whether it was essentially fraudulent. It is whether these particular people were satisfied or not.

Mr. AUSTIN. Whether the Postmaster General was satisfied from the complaints in this investigation that there was a violation.

Mr. MADDEN. If the Postmaster General was satisfied from the 20 per cent that it was a fraud, it was his duty to issue a fraud order.

Mr. AUSTIN. Yes.

Mr. MADDEN. Whether the other 80 per cent thought they were defrauded or not.

Mr. AUSTIN. That is what I insist upon.

Mr. REDFIELD. I agree to that, but that is not the case here.

Mr. MADDEN. It was not his duty to scrutinize each individual case of a party who thinks he is dissatisfied or misled or deceived.

Mr. REDFIELD. The point is as to the satisfaction.

Mr. AUSTIN. They were evidently not satisfied, because they made complaint to the Postmaster General, who instituted an investigation to find out if the complaints were well founded, and issued a fraud order.

Mr. MADDEN. It will appear later that the post-office inspectors were busy going about the country cultivating these complaints.

Mr. REDFIELD. As a matter of fact, it is of record before this committee that the very condition to which the Postmaster General may be said indirectly to have objected, was supported by a verdict of the courts that followed, and the bank was restored to its owners.

The CHAIRMAN. I understand that the bank then was in the hands of a receiver?

Mr. MADDEN. Yes, sir.

The CHAIRMAN. And that Mr. Lewis had made a proposition to the stockholders to buy its stock on certain terms?

Mr. MADDEN. Yes, sir.

The CHAIRMAN. Some of them were accepting the terms and some were rejecting them. Now, the Postmaster General steps in as guardian of the stockholders, and because of these complaints undertakes to act as a censor. That is a very dangerous power for any department of the Government.

Mr. AUSTIN. Is it not a fact that the bank was closed through the laws and courts of Missouri?

Mr. MADDEN. No, sir.

Mr. REDFIELD. It was determined that there had been a mistake made, and the case was reopened.

(Thereupon, the committee took a recess until 1.30 o'clock p. m.)

AFTER RECESS.

STATEMENT OF MR. EDWIN C. MADDEN—Continued.

Mr. MADDEN. I had just quoted from the Postmaster General's November 6 letter.

Mr. McCoy. What year was that?

Mr. MADDEN. November 6, 1905; following this October 14 letter of mine, where I had washed my hands of the case, and in that letter he had stated that—

If this department can be satisfied that in making those assignments stockholders are acting with full knowledge of all the circumstances and are not in any way misled or deceived, the department will interpose no objection thereto.

That was the last thing I read before the committee took a recess. What law gives him the right to interpose any objection at all? It is true that he might, upon "evidence satisfactory to him," issue another fraud order against Lewis as president of the Lewis Publishing Co. But the authority given in that statute may be exercised only when the proposition is a fraud. The order shuts off delivery of all mail matter—letters, post cards, printed matter, newspapers—all. It is not a question of whether the parties sending the matter are acting with full or only part-knowledge of all the circumstances or whether they are, as a matter of fact, misled or deceived. Under the law a fraud is a fraud and he can get no matter through the mails.

Mr. McCoy. Was any fraud order issued against the Lewis Publishing Co.?

Mr. MADDEN. No, sir. Plainly, as this matter stood, it was not a question of whether this assignment of stock by stockholders was induced by fraud on the part of Lewis. It was one of whether the persons assigning the stock were in full knowledge of all the circumstances. If so, they might send and Lewis might receive, "the department will interpose no objection thereto." But that is not all; Fulton, the direct agent of the Postmaster General in St. Louis, goes the limit. He takes the names and addresses of the bank and publishing company's correspondents from the mail matter, and sends them a letter asking if their business transactions with both "have been satisfactory." Covertly he invites complaint and furnishes penalty envelopes for reply. He asks the parties addressed to treat the matter as "strictly confidential," presumably for the purpose of placing some obligation upon them to keep the inquiry dark and not disclose his search for complaints, if it should turn out that the parties' business transactions had been satisfactory.

Mr. AUSTIN. Have you a copy of that letter?

Mr. MADDEN. I have. I was going to state that it will go into the record presently.

Mr. AUSTIN. I would like to have it read.

Mr. MADDEN. You want it read now?

Mr. AUSTIN. Yes.

Mr. MADDEN. I am not sure I have it with me; I expected to produce it later.

Mr. ALEXANDER. The suggestion was that Mr. Madden make his statement first and then introduce his letters later.

Mr. MADDEN. I intended to put it in, but I may have it right here; I will see. I have not. I will produce it in the morning. I can produce a good many copies of that.

Mr. McCoy. Do you know what exhibit you will call that?

Mr. MADDEN. It will be the next number after the last one that I gave there, if you remember it; I do not remember the last number that I gave, but it was 12 or 13.

Mr. McCoy. We will just say that this letter will be produced at the proper time and offered, and if received, will be marked "Exhibit 13."

EXHIBIT No. 13.

POST OFFICE DEPARTMENT,
OFFICE OF INSPECTOR, ST. LOUIS DIVISION,
St. Louis, Mo., April 20, 1907.

With return of this letter, please inform me whether your business transactions with The People's United States Bank, The Lewis Publishing Co., E. G. Lewis, president; F. V. Putnam, treasurer; and H. L. Kramer, trustee, have been satisfactory, and advise me fully as to the particulars thereof, and forward all your correspondence received from them, except the certificate of stock, which it is desired that you retain. You should also send the envelopes in which the correspondence was received, having first written your name on each for identification.

It is thought proper to make the above requests because of inquiries received at this office as to the business of the firm named, and this letter should not be regarded as in any way reflecting on their character or reliability, and should be treated as strictly confidential.

Your early reply under cover of inclosed envelope, which does not require that a postage stamp be affixed, will be duly appreciated.

Very respectfully,

R. M. FULTON,
Inspector in Charge.

[Addresses and postmarks of envelopes in which correspondence was received.]

Alfred W. Rich,

350 Manhattan Avenue,
New York, N. Y.

Postmarks: (Mailed.) St. Louis, Mo., April 27, 1907, 12.30 p. m. (Received.) Cleveland, Ohio, April 29, 7 a. m., Sta. B.

Return envelope (address):

Post Office Inspector in Charge,

Saint Louis,
Mo.

No postmarks.

Mr. MADDEN. Even assuming, for the sake of argument, that the Postmaster General was acting in good faith in these matters, was he really performing a duty? Does any law definitely require him to perform such functions? If not, does any law exist which is capable of being construed to authorize or permit the performance of such functions? Or is it paternalism gone wild?

If I read the laws correctly and imbibe their spirit accurately, the people have confided to the stewardship of no man such a supervision of their intelligence. They have reserved to themselves the right to proclaim when they have been misled or deceived by statements made to them, and if the deception be unlawful, to have the issue tried by a clearly constituted authority.

Mr. AUSTIN. We had that point up this morning, I believe?

Mr. MADDEN. Well, somewhat.

Mr. AUSTIN. Your remedy is in court and not action on the part of the Postmaster General?

Mr. MADDEN. Yes.

The postal laws make the Postmaster General the director and general manager of the postal service. Within the lines of that service he has broad discretion and is all-powerful. His commission is to manage it in the best interest of the people, who are the proprietors and owners of that service. I think it will be impossible to find in his commission a duty imposed upon him to so supervise

the private business conduct of the people. The United States Supreme Court has held that the acts of all the officers of the Post Office Department "must be justifiable by some law." If there be any postal law capable of being construed to impose such a duty upon the Postmaster General, as he declared in his letter of November 6 to be his, I have been unable to find it.

A reading of this letter of November 6 from the Postmaster General to President Lewis, together with the letters of Inspector Fulton and Postmaster Wyman, will give some idea of the extent and nature of the surveillance, the harrassing, the obstructions, and the artful inviting of complaints in the manipulation of the department and its powers to accomplish the ulterior purposes of the conspiracy which I have charged existed.

It goes without saying that if such functions as these are regularly to be performed by the Postmaster General and his post-office inspectors the appointing power in selecting men for office will be bound to examine into their qualifications for such delicate and important duties concerning the private business affairs of the people beyond the qualifications necessary for the performing of postal duties within the lines of the postal service. This is because in this day every business uses the mails, and, as the matter stands, if these be functions of the postal officers every transaction by mail is, in theory, subjected to their scrutiny to find if the parties are acting with full knowledge of all the circumstances and are not in any way misled or deceived, and further whether they are satisfied.

If the business subjected to such an inquiry escapes wrecking from the mere investigation itself and the "recommendation" of the inspector, it will not escape if the decision of the department be adverse. If these are not proper duties of postal officers, the evidence is clear that they performed such duties in this case and the destructive effect is not lessened. Nor was there any process under existing law by which the company could stay the lawless and destructive work of the officials, carried on surreptitiously and by the might of the Government.

As a last word upon this phase of the matter, I quote again the following few sentences from what Senator Root, on January 28, 1909, said to the Legislature of New York:

I believe that the essential quality of free government is to be found in the observance by all public officers of the limitations set by law upon their powers. Once admit the right of public officers to disregard limitations upon their powers and you are launched on the course by which good men come to be benevolent despots, with the inevitable corollary that bad men have the opportunity to become tyrannical dictators.

Mr. MCCOY. You asked a question, or suggested an inquiry, whether there was any legal process by which such actions as you have been describing on the part of the post office can be stayed, but you did not answer the question. Do you know of any such process?

Mr. MADDEN. I do not. It is carried on secretly; the company does not know it until it is done.

Mr. AUSTIN. You mean their investigations are?

Mr. MADDEN. Yes, sir. They are carried on in secret. The company would not know that their patrons were being circularized to know whether their transactions were satisfactory.

Mr. McCoy. Well, assuming that the fact would become known to the publisher of the newspaper, is there any legal process by which that sort of an investigation could be stayed?

Mr. MADDEN. I do not think so, sir.

Mr. AUSTIN. Suppose a party was really violating the law and was an offender, would you not put him on notice and give him an opportunity to cover up his tracks and prevent your getting at the real violations?

Mr. MADDEN. I suppose if a person was an offender and it was necessary for you to go out and search the country to find evidence to prosecute that offender that it would not be just the thing to tell him that you were looking for that evidence. As a matter of practice I do not know but that is so, and ordinarily, in transactions in good faith, I do not think there would be any great amount of protest, but we are basing our case upon these circumstances not being in good faith.

Mr. REDFIELD. But suppose, Mr. Madden, the result of the inquiries thus made is to fail to establish the fact that the man is an offender, is there any form in which the Government makes good the injury done to his business by the inquiry?

Mr. MADDEN. None at all.

Mr. REDFIELD. Is not the mere inquiry, as to whether a man is acting in good faith or not a damage to him, even if he be acting in good faith?

Mr. MADDEN. It certainly is.

Mr. AUSTIN. But is it not true that the department claims it had justification for this action?

Mr. MADDEN. The department could have no justification for violating the law.

Mr. AUSTIN. I am not asking for your opinion; I am asking you if that is not the position of the department, that it had justification?

Mr. MADDEN. I assume the Postmaster General claims that, and I assume you gentlemen will have him explain to you what his justification was.

Mr. McCoy. I am asking you about a case where the Postmaster General is acting in good faith in circularizing the clientele of the newspaper or magazine. I am assuming that the publisher finds out that he is so doing and claims that it injures his business and claims there is no ground for any such circularization. Is there any legal process by which such proceedings could be enjoined by the newspaper on a proper showing, or is it a matter so much in the discretion of the Postmaster General that the courts would not interfere?

Mr. MADDEN. I do not see how he could bring court interference in such a case.

Mr. McCoy. I did not know but what you had looked it up?

Mr. MADDEN. I never heard of such a thing, and I do not think it is possible.

Mr. ALEXANDER. Under that sort of an investigation the innocent are bound to suffer with the guilty.

Mr. REDFIELD. That can not be conducted in such a way as to be other than disastrous to the business. If the Government has knowledge in advance that a man is guilty then it would seem unnecessary, and if it has not that knowledge it is an unrighteous way to get it.

Mr. TOWNER. I absolutely dissent from that statement.

Mr. ALEXANDER. What would be the effect on the business of a bank in Washington City if some officer of the Government should write a letter to the depositors in the bank asking if they were depositors in that bank and if their transactions with that bank were entirely satisfactory, and if not, in confidence to communicate with the department?

Mr. MADDEN. It would not last 24 hours.

Mr. ALEXANDER. It would be destroyed?

Mr. MADDEN. Yes, sir.

Mr. REDFIELD. Such a thing as that has been declared a criminal offense in New York State.

Mr. MCCOY. The point of my inquiry was whether a man had any rights which he could enforce, because if he has not it emphasizes the necessity for caution on the part of the department. That was the scope of my inquiry.

Mr. TOWNER. We would all agree that great caution should be used and that every individual right should be protected, but the statement that the Government officials can not make any inquiry with regard to whether violations of the law are occurring certainly would absolutely put the Government at the mercy of every person who sought to violate the law. The question is not whether the Government ought to institute inquiries for the purpose of finding out whether there have been violations of the law, but whether the Government has proceeded in these inquiries in a legal and legitimate manner. The charge is made here that they proceeded in an illegal and illegitimate manner. It seems to me we can only determine that question after we have found out the facts, and then determine upon the facts whether or not what the Government has done is justified under the law.

Mr. MCCOY. And a further inquiry is whether or not the Government does, in these cases, proceed with proper respect for the business of innocent people. That is something we are concerned with, too.

Mr. TOWNER. I should think so; I agree with that statement.

Mr. MADDEN. I venture the statement that there is nothing of record in the Post Office Department that will show anything corresponding to the inquiries that were conducted in this case—that this is a case by itself; there is nothing like it.

Mr. TOWNER. I understand that is the claim that is made by you?

Mr. MADDEN. I am positive as to that so far as the Lewis Publishing Co.'s mail matter is concerned; as to the bank matter I never heard of any and I do not believe there is one.

Mr. TOWNER. That is a matter susceptible of proof.

Mr. MADDEN. I do not know that even if it were proven it would make it right; but that is another matter. It has been charged in what has gone before that the wrongs complained of were accomplished by means of a conspiracy. This letter of November 6 from the Postmaster General throws light upon the processes employed.

Attention is directed to his statement concerning the "investigation" which President Lewis, under date of October 12, complained of as being instituted by the local postmaster. He says to Lewis, "I am informed that the investigation which was at that time (October 11) instituted has been practically completed."

The importance of this statement is both present and future. For the present we have him on July 12 previous, ostensibly turning

the case over to the Third Assistant to be handled "along the usual lines." In spite of this, he had instituted another investigation along unusual lines without the knowledge of the Third Assistant, and has reports upon that investigation made to him on the side. From those reports he is able to state that the investigation is "practically completed."

Later it became very important for the Postmaster General to cover up his tracks in this case, and he wrote a letter which I shall put in the record in due course, designed to place responsibility for all his irregular conduct upon the Third Assistant. In order to make this point clear now, I quote the following from his letter:

You explained that in conducting the inquiry into the publication methods of the Lewis Publishing Co. in respect of the Woman's Magazine and the Woman's Farm Journal unusual methods have been used. If this be so, then the responsibility for those unusual methods rests upon you, for in the memorandum just quoted (his letter of July 12) you are directed to "have investigation made along the usual lines pursued by your bureau" and that it be "completed as promptly as may be consistent with your general practice." There was no reason whatever why you should not have proceeded with this matter strictly in accordance with your usual methods and practices, from and after July 12, 1905.

Gentlemen, I think that is an astounding statement.

Mr. AUSTIN. You did carry on the usual investigation?

Mr. MADDEN. No, sir. Following the receipt of the letter of July 12, I said to the Postmaster General, "I will treat these publishers under the rules formulated for Bromwell and Weinschenk," but while these rules were in his hands he instituted another investigation himself and without consulting me or without consulting the classification division.

Mr. AUSTIN. He must have had some information on the side?

Mr. MADDEN. Perhaps he will tell you what it was; I hope he will produce it; I knew of none. When he turned it over to me to be handled along usual lines, why did he not consult with me if he had information on the side? Why not give it to me?

Mr. AUSTIN. He did not think you were in sympathy with him?

Mr. MADDEN. Then why did he not keep the case? Why did he turn it back to me?

Mr. AUSTIN. I will tell you later when I get him on the stand.

Mr. MADDEN. All right. He has testified; he has testified in New York that there was friction; that was all.

Mr. AUSTIN. But not before this committee?

Mr. MADDEN. No, sir.

We now return to the main line of the case of the Lewis Publishing Co. The following facts, shown so far by the record, are important to be stated:

First. The investigation, called an "exhaustive inquiry into the publication methods of the Lewis Publishing Co.," commenced in March, 1905. The report thereon was forwarded by the inspectors May 17 and reached the department May 19. It was sent to the Third Assistant for action.

Second. The Third Assistant, in a communication, dated June 8, to the Postmaster General, called attention to the irregularity of the proceeding of the inspectors; also, to the fact that the matters reported largely had no relevance whatever to the question of the right of the publishing company to mail its magazines as second-class mail matter, which the report of the inspectors was designed to cause to be annulled. Nevertheless, in consideration of this report, together with a telegram,

dated May 31, from Inspector Fulton, calling for "concerted action" on the bank and the publishing company, the Third Assistant, acting under the advice of the special assistant attorney, was prompted to cite the publishing company to a hearing June 17, 1905.

Third. On July 6 the Postmaster General issued a fraud order against the bank. On July 8 the Third Assistant, instead of ruling the publications out of the second class in "concerted action" with the movement against the bank, as recommended by the inspectors, made an elaborate report upon the case of the magazine to the Postmaster General.

Mr. ALEXANDER. What is the date of that?

Mr. MADDEN. The date of this report was July 8. This report showed that there were no grounds for action, concerted or otherwise, against the magazines; that if the reasoning of the inspectors were applied every publication would be suppressed; brought out the irrelevancy of the matters contained in the inspectors' report to the question of the mail rights for the magazines; and it also directed attention anew to the irregularity of the proceeding. It showed, too, that the company had offered to promptly correct any of its practices, whether it were that of charging too low a subscription rate or carrying too much advertising, or otherwise, immediately upon notice.

Fourth. On July 12, four days later, the Postmaster General sent the case of the magazines to the Third Assistant, to be handled "along the usual lines pursued by your bureau," but the giving of notice of the decision was forbidden. It was now to be assumed that whatever investigations might be necessary in connection with those magazines should be carried on in accordance with regulations, which give the Third Assistant jurisdiction of the matter, subject only to appeal to the Postmaster General.

Fifth. On July 19, seven days later, the Postmaster General promised Messrs. Bromwell and Weinschenk, attorneys for the publishers, that rules would be formulated and published for the guidance of all—

Mr. ALEXANDER (interposing). Have you not gone over that feature of the case?

Mr. MADDEN. Yes; I was summing them up to get them together. If you like I will omit this.

Mr. MCCOY. No; I think that summary is a good thing.

Mr. MADDEN (continuing). That rules should be formulated and published for the guidance of all, as to the requirements of the department in the matter of administering the law in relation to second-class mail matter. The request for such rules was because of the fact that the Third Assistant was reforming the abuses in the second class, and publishers, long having followed practices with which the department had previously found no fault, were fearful that some of those practices might, in the progress of the reform, cause them embarrassment or loss. Their desire was to know in advance, what was objected to, and to be given an opportunity to comply with any new rules which might be adopted, and to this the Postmaster General agreed.

Sixth. On July 21, two days later, the Third Assistant advised the Postmaster General that he had assigned the Lewis Publishing Co.'s magazines to be taken up and considered with others in their class when the rules promised Bromwell and Weinschenk had been published, and an opportunity given publishers to correct their practices

to be in accordance with those rules. The Postmaster General made no response.

Seventh. On October 11, the rules not yet having been published, post-office inspectors, the special representatives of the Postmaster General, again disturbed the peace of the Lewis Publishing Co., and conducted another investigation, concerning which the Postmaster General says in his letter of November 6 to President Lewis, that he is informed it "has been practically completed." This investigation, like the first, was conducted without the knowledge of the Third Assistant, and in violation of the regulations, giving him jurisdiction. It was also conducted in violation of the Postmaster General's agreement in the letter of July 12 to permit the matter to be handled "along the usual lines pursued by your bureau." If an investigation were for any reason necessary, and were conducted "along the usual lines," the special agents, expressly authorized by Congress for that work, would have been employed upon it and not post-office inspectors.

Eighth. This investigation, which is "practically completed," is undertaken at a time when the publishing company is resting under the belief that the matters upon which it was given a hearing on June 17, 1905, before the Third Assistant, are still pending, for it had received no notice of a decision having been made. The Postmaster General had directed that the decision which had been made be not given out.

Ninth. This investigation, which was "practically completed," was carried on, and this letter of November 6 was written by the Postmaster General while he is holding up the publication of the rules, which would give publishers notice of the practices to which the department objected, and which, when published, allowed them time to correct those practices.

Mr. AUSTIN. I believe you admitted this morning that you did not charge that the Postmaster General was holding up these publications?

Mr. MADDEN. No; I would not say that he did that purposely, but I did call his attention to the fact that this investigation was being conducted while he had those rules in his possession; in the October 14 letter I drew his attention to that. Tenth, on October 14, 1905, about 22 days before the Postmaster General wrote this letter, announcing that his investigation was "practically completed," the Third Assistant sent him a pointed communication. It quoted in its entirety the complaint of President Lewis, concerning this very investigation, and called the Postmaster General's attention to the fact that the course he was following would bring public criticism on the department for subjecting a publisher to such persecution, and that his conduct would not stand judicial scrutiny. This letter also called his attention to the fact that the rules which were promised July 19 previous, and which had been formulated and agreed upon for the guidance of publishers as to the requirements of the department, were then in his hands, being held up from publication.

It would seem to be apparent by this time that the Postmaster General's letter of July 12, sending the case to the Third Assistant to be handled "along the usual lines pursued by your bureau," was simply a move in the game. It was to make the record right. The proposition for "concerted action" on the bank and magazines had just failed. The Third Assistant had balked. A new plan of attack

upon the Publishing Co. was to be formulated. It was all important that what was to be done, should be well done, and done over the Third Assistant's signature. He was the proper officer to act for the department. Therefore, on the face of the record, the case was from July 12 in his hands. That the Postmaster General thought this was sufficient cover for the means which he proposed to employ to accomplish his ends, is shown by the quotation already of record from a later letter of his, which I shall later place in the record. The significance of his forbidding the Third Assistant to make known the decision upon the hearing of June 17, 1905, will be manifest. It kept the way clear for action in St. Louis where the case was to be worked up and presented anew to the Third Assistant "along the usual lines," through the local postmaster.

Mr. AUSTIN. You said yesterday that you had served under four or five Postmasters General?

Mr. MADDEN. Five.

Mr. AUSTIN. Did you ever know of a single one of those men to use his personal feeling or malice in a public matter of that kind?

Mr. MADDEN. No, sir.

Mr. AUSTIN. This is the only exception you know of?

Mr. MADDEN. Yes, sir; I will admit that for half the time I believed it was just a mistake, and I was reluctantly convinced that it was not a mistake.

Mr. AUSTIN. Now, you have read here this morning an extract from a letter from Mr. Cortelyou in which he stated that he had no feeling, and what he wanted to do was to do his duty.

Mr. MADDEN. Yes; I read that.

Mr. AUSTIN. Now, can you give us any reason why Postmaster General Cortelyou had any feeling in this matter?

Mr. MADDEN. Yes, sir.

Mr. AUSTIN. Was he unfriendly to these people? Had they ever done him an injury or was he interested in any rival publication? Is there a motive for it that you can point to?

Mr. MADDEN. I have already given my view of his motive; it is in the record.

Mr. AUSTIN. Well, you told us in the beginning of the conspiracy that you thought existed between the Postmaster General and Senator Platt, who was the head of the Adams or United States Express Co., but that, as a motive, does not involve this publication?

Mr. MADDEN. Oh, yes; I explained the motive and carried it on.

Mr. AUSTIN. You made reference to the banking business?

Mr. MADDEN. The banking and publishing business.

Mr. AUSTIN. Which was in opposition to the express company's business, but I did not know that Senator Platt was interested in any publication?

Mr. MADDEN. If you will read what the record states on that it shows this, that I said substantially this: That the express money-order business was being exposed by Lewis in his publications and criticisms of the department were going broadcast in the land in them, and that it apparently was the desire to crush the publication simultaneously with the bank. I failed to act in concert as Third Assistant Postmaster General, and then the play went on from that.

Mr. AUSTIN. I have known General Cortelyou for a long time, beginning away back when he was private secretary to McKinley, and I have always regarded him as a very honorable man.

Mr. MADDEN. Well, so did I.

Mr. AUSTIN. And a very competent man; he is the only man in my time that has ever filled three different Cabinet positions, and I have never heard a breath of suspicion affecting his personal honor or official integrity, and I do not want to be asked to condemn a man with such a splendid record upon mere suspicion and information. I would like you to give us something in the way of facts.

Mr. MADDEN. Do you not think I am giving you facts?

Mr. AUSTIN. Well, in this conspiracy business of yours there are no facts upon which to base it.

Mr. MADDEN. Do not these facts——

Mr. AUSTIN (interposing). Especially in view of Gen. Cortelyou's statement, made over his signature, that he had no interest in any feeling in this matter except to do his duty as Postmaster General.

Mr. MADDEN. I am only part of the way along; I have got a lot of facts to bring out.

Mr. ALEXANDER. Would it not be better for us, sitting here as a judicial body, to wait until the case is presented before we express any opinion?

Mr. AUSTIN. I have a good opinion of Mr. Cortelyou's honesty and it will take a good deal to change it.

Mr. MCCOY. Did you say that the Lewis Publishing Co., in any of its publications, was criticizing the express money-order business?

Mr. MADDEN. Yes, sir.

Mr. MCCOY. At that time?

Mr. MADDEN. Yes. I can not be positive about that.

Mr. MCCOY. Had it previously to that time?

Mr. MADDEN. Yes. It was advocating parcels post and criticizing the express money-order service and it was offering to the people free money-order service, the bank was.

Mr. MCCOY. Can you produce any of these magazines in which are contained any of these criticisms of the way the express money-order business was carried on?

Mr. MADDEN. I suppose they are out there in the files, but I can not say.

Mr. MCCOY. Can you produce any witness who can say of his own knowledge?

Mr. MADDEN. Mr. Lewis, when he is on the stand, will be able to tell.

Mr. MCCOY. Did you also say that any of the magazines were criticizing the management of the post-office money-order business?

Mr. MADDEN. No; not the post-office money-order business, not that I recall.

Mr. MCCOY. But simply the express money-order business?

Mr. MADDEN. Yes.

Mr. MCCOY. And it was stirring up the parcels-post matter?

Mr. MADDEN. Yes; those two; but he was aiming to establish a parcels post and cheap money orders. Here, we depart for a moment from the main line of statement. In Exhibit 8 will be found photographs of the interior and exterior of the buildings of the Lewis Publishing Co. One building is octagon in shape. The third and fourth floors can be entered by one door only. The elevator takes one to the hallway just outside this door. The subscription books and files of the company were, in October, 1905, kept on that floor, under the management of Miss Elizabeth C. Hannagan, a trusted employee.

The investigation, conducted by the Postmaster General's special representatives in October, 1905, was into the files and papers in charge of Miss Hannagan. I submit herewith in one, marked Exhibit No. 25, the affidavits of Miss Hannagan and Mr. W. E. Miller, secretary of the company, to the effect that when the inspectors released the records of the company, they were in such a state of disorder that it was two months before they could be straightened out, and the company's business could be carried on with customary dispatch and attention to the needs and complaints of its patrons.

The inspectors took possession of the records for the time being. When they left at night, they sealed up the door so that no member of the firm or employee could enter. Employees, reporting for duty on that floor in the morning, before the inspectors showed up, were required to wait until they arrived and broke the seal.

I submit here, and I ask to read, the affidavit of Miss Hannagan, concerning this investigation:

STATE OF MISSOURI, *County of St. Louis, ss:*

Elizabeth C. Hannagan, being duly sworn, deposes and says that she was in October, 1905, and for a long time prior thereto, and has since been in charge of the subscription files of the Woman's Magazine and Woman's Farm Journal, published by the Lewis Publishing Co., at University City, St. Louis, Mo.; that she turned over to the postal authorities in October, 1905, the publishing company's subscription cards and records for the Woman's Magazine and Woman's Farm Journal for the purpose of some investigation by them; that when the postal officials finished said investigation and released the subscription cards and records to her custody they were in such a state of confusion that it was two months before they were gotten in proper order, and the company's business could be transacted with its customary facility and dispatch.

ELIZABETH C. HANNAGAN.

Subscribed and sworn to before me this 27th day of January, 1911.

[SEAL.]

JOHN W. LEWIS,
Notary Public, St. Louis County, Mo.

My commission expires November 23, 1914.

I will ask to read another affidavit:

STATE OF MISSOURI,
County of St. Louis, ss:

William E. Miller, being duly sworn, deposes and says that he was, in October, 1905, and for a considerable time prior thereto, and up to August 8, 1907, assistant secretary of the Lewis Publishing Co.; that subsequent to August 8, 1907, he was and is now secretary of the Lewis Publishing Co.; that it was and has been his function to have general knowledge of the business affairs of the Lewis Publishing Co., including knowledge of the business of its magazine subscription department; that the subscription cards and records of the Woman's Magazine and Woman's Farm Journal of the Lewis Publishing Co. were turned over to the postal authorities in October, 1905, for some investigation by them; that to his knowledge when the said subscription cards and records were released by the postal authorities they were in such a state of confusion that it was two months before the subscription department could get them in order and the business of the company could be transacted with its customary facility and dispatch.

W. E. MILLER.

Subscribed and sworn to before me this 31st day of January, 1911.

[SEAL.]

JOHN W. LEWIS,
Notary Public within and for St. Louis County, Mo.

My commission expires November 23, 1914.

Mr. TOWNER. Mr. Madden, who prepared those affidavits?

Mr. MADDEN. I did, sir; that is to say, after consultation with them I prepared them.

Mr. TOWNER. Certainly.

Mr. MADDEN. I desire to submit another affidavit:

STATE OF MISSOURI, *County of St. Louis, ss:*

William C. Woods, being of lawful age, deposed and on oath says, that he was in the year 1905 and prior thereto foreman printer of the Lewis Publishing Co.; that in the year 1905, his office was on the third floor of the magazine building; that the magazine subscription department was likewise on the third floor; that the entrance to the third floor is controlled by one doorway; that in October, 1905, the exact date he does not recall, when post office inspectors were conducting an investigation into the card subscription files of the *Woman's Magazine* and *Woman's Farm Journal*, they worked upon that floor; that the employees of the company connected with the subscription department were excluded from the floor; that when the postal officials left off work at night, they sealed up the entrance to the entire third floor; that it frequently happened when he and his subordinates arrived at the office in the morning to take up their daily duties, the postal officials had not yet arrived; that on such occasions, of which there were many, he and his office force were required to wait the arrival of the postal officials to break the seals so that he and his subordinates could get into their offices; that this exclusion from his office of himself and his force interfered materially with the business of the Lewis Publishing Co. in his charge.

WILLIAM C. WOODS.

Subscribed and sworn to before me this 9th day of June, 1911.

[SEAL.]

D. COHEN, *Notary Public*.

My commission expires March 21, 1915.

Mr. TOWNER. Was that affidavit also prepared by you?

Mr. MADDEN. Yes, sir. During and about the time the records were in the state of disorder, testified to by Miss Hannagan and Mr. Miller, the local postmaster and the inspectors were circularizing the postmasters of the country and calling upon them to make inquiries, through their letter carriers and otherwise, of the persons to whom the Lewis Publishing Co.'s mail matter was addressed, as to whether they were receiving copies of the magazines regularly, etc., and inviting complaints against the company. The communications they were sending out were to be treated by the postmasters receiving them as "confidential," and they were directed to say to the parties of whom these inquiries were made "that the department desires this information." I submit herewith in one Exhibit No. 26, a copy of the circular letter sent out October 6, 1905, by Inspector Fulton and a copy of the circular letter sent out by the local postmaster in November, 1905.

This committee will know and any publisher or business man will know what these investigations, so called, meant to the company, regardless of what action might be taken upon them by the department. The alleged findings in the March investigation were let out in a way past discovery by the Postmaster General, to be published in a local newspaper. It destroyed local credit immediately. It was sufficient to taint and carry down to ruin any enterprise, no matter what was done by the department. If these investigations were kept up, regardless of how the department might decide upon the findings in them, credit could not be revived. In these times without credit no enterprise of any magnitude can exist. It is possible therefore by investigating and investigating to smother any enterprise.

Mr. AUSTIN. Do you charge the Postmaster General with the responsibility for the local publication?

Mr. MADDEN. No. I do not. I simply state it was let out or given out.

Mr. AUSTIN. I thought you mentioned the Postmaster General?

Mr. MADDEN. No. I think it is due to say that the Postmaster General, when Mr. Lewis complained of that publication, instituted an investigation, and the result was that they could not find out who gave it out. The newspaper man would not tell how he got it; at least, it was so claimed. I do not know. I do not think, nor would I have ever thought, he would do that.

Mr. AUSTIN. You were Third Assistant Postmaster General and this business was under your jurisdiction. Now, suppose there was a publication with 100,000 alleged subscribers and one-half of them were illegitimate, how would you find out about it except by making an investigation?

Mr. MADDEN. Whenever I had any doubt about a publication complying with the law I had the right to call upon the publisher to prove his compliance, and if he did not prove it to put his publication out of the second class, and he must produce proof satisfactory to me.

Mr. AUSTIN. Suppose he had some cooked-up books or records?

Mr. MADDEN. Then the law provides a proper penalty in such a case.

Mr. AUSTIN. Well, would it be illegitimate or improper to find out, through circulars, whether 50,000 of the subscribers were illegitimate?

Mr. MADDEN. In a case of good faith I should say that if the Postmaster General or the Third Assistant believed he had been fooled by the evidence submitted, that he might proceed in any proper way to find out the truth.

Mr. McCoy. Had the Lewis Co. ever been called upon to submit the kind of proof which you say you ordinarily required?

Mr. MADDEN. No, sir.

Mr. McCoy. So they were not given an opportunity to make good?

Mr. MADDEN. Not up to that time.

Mr. McCoy. The circularizing began without any opportunity being offered the Lewis Co.?

Mr. MADDEN. I think I ought to say about circularizing, that up to this time it was an unheard of proposition, in the course of the mail service, for a postmaster to do such a thing.

Mr. McCoy. A local postmaster?

Mr. MADDEN. Yes, sir. When that is done it is done by direction of the department in proper cases. In this case the officer having charge of it, if it were done at all—and it was always a doubtful procedure in my own mind—should have been consulted, and the method ordinarily employed, so as to damage as little as possible, ought to have been adopted.

Mr. McCoy. At any rate, the fact was that the Lewis Publishing Co., before this circularizing began, was not afforded an opportunity to demonstrate the bona fides of its circulation list?

Mr. MADDEN. No, sir; it was not. I will produce, at the proper time a little later on, a letter from the inspectors calling upon the company to produce these records, and the reply of the president of the company, which will explain that.

Mr. BRITT. Mr. Madden, is it, or is it not, a fact that you recommended to Congress, through the Postmaster General, the making of an appropriation for the defraying of the expenses of a number of special agents to be attached to your bureau, which number was allowed, and whose services you afterwards, as Third Assistant Postmaster General, employed in making investigations and inquiries

into the business of publishers, in many instances examining their publishing houses, offices, and files, and reporting the same to you for your information?

Mr. MADDEN. No, sir; not as you state it.

Mr. BRITT. Well, will you be good enough, for my information—and I am asking now in the most perfect good faith—to explain what your administrative policy in that particular was?

Mr. MADDEN. I have already explained it, and it is in the record, that my objections to the methods of the post-office inspectors—who to my mind always went out to make a case and find evidence to suit their recommendations rather than to get the facts for me when I needed facts to act upon—had prompted me to go to Congress and ask for my own special agents, and Congress listened to my appeal and gave me a corps of them and they worked in my office and did not work under the Postmaster General and took my instructions, and not the Postmaster General's, and reported to me, and they were assigned by law to the classification division.

Mr. McCoy. Did you appear before any congressional committee and make a statement?

Mr. MADDEN. Yes, sir; I do not remember just what statement I made; I can not tell you. I was prompted to ask for them by reason—

Mr. AUSTIN (interposing). Did you have your inspectors examine their offices and records?

Mr. MADDEN. In this way: Sometimes I might send my inspectors—and they were most of the time on the road, about half of the time—to a publisher and ask him to explain something that had come up, give him a chance to explain it away if he could, and report it to me, or, if necessary, they would permit him to prove his statement to them rather than to cite him to come to Washington and prove it. The publishers had the option of submitting to them what proof they had, and they reported that to me, and upon that I acted.

Mr. AUSTIN. Suppose he submitted his subscription books? Would your agents go beyond his statement and call upon subscribers to verify the statement?

Mr. MADDEN. When we had doubt we did circularize in this way—but it was very carefully done in a few instances and small numbers, because of the great damage that was done. I might cite this to you for your information: Senator Depew was concerned in a New York publication, and without my knowledge—I did not have knowledge of every transaction of the classification division—the classification division had sent out circulars asking if certain people were subscribers to the publication, because it looked like a fake. I remember that the Senator came into my office and I had a good deal of work to keep him from eating me up. He said—and I remember his remark—that a Gatling gun would not be more successful in mowing down a list of subscribers than such an inquiry as I was making. I showed him it was very immaterial and that we would take the general average. Now, the rule in my office at that time was this: That where we did circularize, if 80 per cent were favorable to the publisher we said nothing about it; we allowed the other 20 per cent.

Mr. BRITT. Then I am to understand, in answer to my inquiry, that for the purposes of these inquiries into the business of publishers you did use your special agents exactly in the way inspectors would be

used, unless they should transcend their authority in the instances which have been suggested here, but unless they did so transcend their authority and abuse their official position there would be no material distinction between the use of the special agents in the way you used them and the way the inspectors were used for like purposes—is not that true?

Mr. MADDEN. No; not as you state it.

Mr. BRITT. Explain it, then, please.

Mr. MADDEN. You said that I sent out these inspectors to examine into the business of publishers; I answered that by stating that the business of publishers was none of my business; my business was to classify the mails, the publication that was to be mailed. I looked at it; I came to a conclusion as to whether or not it was a newspaper or a periodical and thoroughly entitled to admission as a physical thing; then the next thing for me to do was to find out whether it complied with the law in having a list of subscribers; it was for me to cause the publisher to make his case to me; it was not my business to go out and make the case to myself; and I took such evidence as he submitted to me, considered it, and decided. Then the law provides that if he furnished me with false evidence that he should be punished.

Mr. BRITT. That I understand, and that is interesting, Mr. Madden. As I said a moment ago, I have similar duties and I am anxious to discharge them in the best way, and I am asking the question in good faith; I have no responsibility for these several matters that happened at that time. But did not these special agents, whom you sent out to make examinations of the publishers' subscription lists, in many instances obtain the information by the full assent of the publishers?

Mr. MADDEN. Surely.

Mr. BRITT. And did not they return to you statistical abstracts or statements fully explaining the methods, and various other forms of data and information helpful to you, which these special agents seem to have acquired in a way perfectly proper and perfectly agreeable to the publishers, and upon that information you acted; is not that a fact?

Mr. MADDEN. Yes.

Mr. McCoy. What was the difference between the method you adopted of circularizing subscribers and the method adopted in the case of the Lewis Co.?

Mr. MADDEN. Well, I do not remember, during my experience as Third Assistant or in my whole experience, of ever circularizing any publication more than once, because it is a disastrous thing at best.

Mr. McCoy. Was the Lewis Co.'s list of subscribers circularized more than once?

Mr. MADDEN. I dare say that it is not an exaggeration to say it has been done 50 times; I do not know whether that is an exaggeration or not, but I think not. I think I will be able to produce records here of the different dates of circulars that have been sent out at one time or another since this campaign began.

Mr. McCoy. To the same set of subscribers?

Mr. MADDEN. I can not tell you that; I know they were sent out and they sometimes asked the same questions over and there were long periods between them. There was a period when Lewis thought the department had subsided in its conduct toward him. There did

not seem to be anything done toward him to attract his attention in any way, but all at once they broke out again.

Mr. McCoy. So far, then, as the method was concerned, your method did not differ in any respect from the method adopted in the case of the Lewis Co. except that in the case of the Lewis Co. there was a more frequent circularization, if there is any such word in the English language, and differing slightly, too, in the form in which the inquiries were made?

Mr. MADDEN. Yes.

Mr. McCoy. In what respect?

Mr. MADDEN. Well, it was never my business to know whether the party was satisfied with his paper.

Mr. McCoy. Can you produce concretely copies of any circular that you sent out and which were sent out in the Lewis case?

Mr. MADDEN. I have not one. I tried to abandon it altogether as a dangerous practice.

Mr. McCoy. In a general way, what was the line of questions which you submitted in the circulars which you have issued?

Mr. MADDEN. Mostly I remember it as a little slip of paper about that long [indicating], in which it was said to the writer, for instance, "The Woman's Magazine is sent to you regularly as a subscriber. Please inform the department if you are or not a subscriber." Just the plain question of being a subscriber. Then later——

Mr. McCoy (interposing). In the same circular letter, you mean?

Mr. MADDEN. No; later that circular was enlarged upon, and we asked other information to find out whether the publisher was selling it or giving it away; whether it was paid for or whether it was not, because those were some of the things we were trying to correct in the department. That is about all I can remember. I always regarded it as a dangerous and bad practice.

Mr. McCoy. How far beyond that did the circulars go which were sent out in this case of the Lewis Publishing Co.?

Mr. MADDEN. I think the circulars, when I put them in the case, will answer that.

Mr. McCoy. You have those circulars?

Mr. MADDEN. I have probably 35 or 40 of them.

Mr. McCoy. Different kinds?

Mr. MADDEN. Different dates.

Mr. McCoy. Was there any form of circular adopted in the department when you were there to cover cases of this kind, or was a special circular prepared in each case?

Mr. MADDEN. Generally it was a form. We did prepare special circulars. I remember in the Hill case in Maine we prepared a special circular, because it was such a large case.

Mr. McCoy. What was the determining factor in preparing a form of circular, and how did you ascertain what line of questions to ask?

Mr. MADDEN. I ought to state this, which has not been made clear before, that I doubt if there was ever any case when we sent those circulars out where the publisher could produce the original orders. I do not think there were any such cases.

Mr. McCoy. The original order?

Mr. MADDEN. Of the subscribers themselves.

Mr. McCoy. But take the cases where it was done. I want simply to get at the basis on which you formulated your questions. Or,

to put the question concretely, did complaints received by the department in regard to any given publication, indicate the line of questions which the department would ask?

Mr. MADDEN. No, sir; not to my mind.

Mr. McCoy. I mean as a matter of fact were not circulars that were issued framed on the basis of complaints received from subscribers or alleged subscribers?

Mr. MADDEN. No, sir; I never did that.

Mr. McCoy. Then, ordinarily, what started up an inquiry along these lines?

Mr. MADDEN. It was the practice I inherited when I went in office and which I curtailed as much as I could, because I did not believe in it.

Mr. McCoy. Taking the practice as you found it, what would set the department in motion?

Mr. MADDEN. That is what I explained a moment ago, where the publisher could not satisfy me——

Mr. McCoy (interrupting). No; that is not it. Does every publisher who applies for second-class rating submit a copy of his paper?

Mr. MADDEN. Yes, sir.

Mr. McCoy. He does?

Mr. MADDEN. Yes, sir.

Mr. McCoy. Now, then, you have, as you express it, the physical thing before you.

Mr. MADDEN. Yes, sir.

Mr. McCoy. And on that physical thing you decide that it is proper to classify it as second-class matter?

Mr. MADDEN. Yes, sir.

Mr. McCoy. Now, then, what would set any further inquiry in motion as to anything in connection with the paper, you having been satisfied that on its appearance it was proper to classify it as second-class matter?

Mr. MADDEN. This was required: When the publisher sought to have his newspaper or periodical entered as second class, he must go to the post office and fill out an application form. The application form provided that the postmaster at that place should examine the evidence that the publisher had of a subscription list and should report upon it, and send the application along with the copy of the publication.

Mr. McCoy. That is it. In other words, it was an automatic thing.

Mr. MADDEN. Yes, sir.

Mr. McCoy. Done in compliance with rules?

Mr. MADDEN. Yes, sir.

Mr. McCoy. Just a little further along that line: If a local postmaster, then, reported that a publication was entitled to second-class rates, that would be the end of it.

Mr. MADDEN. No, sir. That was an original practice which I eliminated. I did not call upon the postmaster to make any recommendation. It was the practice when I went in office, however, to let him make a recommendation, and I eliminated that because I did not believe it amounted to anything. I told him to get the facts. I had that blank prepared for the purpose of getting the facts as to the subscription list.

Mr. McCoy. Then, if the answers given on the blanks showed on the face of them that the paper was entitled to second-class rating, that settled the proposition?

Mr. MADDEN. Yes, sir.

Mr. McCoy. And it was only in cases where the answers were perhaps equivocal or not satisfactory that you, by your revised practice, sent out special agents to make the inquiry?

Mr. MADDEN. Yes, sir.

This investigation business was, as the record will show when rounded out, and according to the department's own published statements, kept up for more than two years, and in addition to the local publication of the findings of the first investigation, the department itself later issued a pamphlet to the general public, purporting to disclose what those investigations uncovered. This pamphlet was circulated broadly wherever the department could find an excuse for sending it. It can be no exaggeration to say that these investigations and the publication of the documents and papers sent out by the department concerning it cost the people of this country from \$100,000 to \$200,000.

Imagine from 10 to 70 Government employees practically constantly in possession of and at work from day to day in this company's office, demanding and taking possession of books and papers, compiling reports and sealing up the entrance doors in the manner described. What other enterprise could live?

Returning now to the consecutive connection of dates, President Lewis wrote the Third Assistant, under date of November 18, 1905, concerning what he had just ascertained from an interview with the post-office inspectors and the postmaster at St. Louis. It has already been explained that the Third Assistant had washed his hands entirely of this case in a letter to the Postmaster General, dated October 14, 1905, and sent every communication in relation to the matter which came in to the Postmaster General. Herewith is submitted in one, marked Exhibit No. —, a compared copy of the Lewis letter and that of November 24, Third Assistant to the Postmaster General, transmitting the Lewis letter.

The following is from the Lewis letter of November 18:

Digressing just a moment, Mr. Austin, you asked me if I could prove that 300,000 copies of one of the magazines had been held up. I am coming right to that proof.

Mr. AUSTIN. No; I did not ask you.

Mr. MADDEN. Yes, sir. You asked me yesterday if I could prove that 300,000 copies of the magazine had been held up, and I am coming now to that proof:

We learned from Post-Office Inspectors Stice and Reid at an interview in the presence of the postmaster of St. Louis, Mr. Wyman, to which we were invited on November 11, that the investigation of the circulation of our publications now being conducted and which has been continuously conducted the past several months, was not ordered by your department or by the Postmaster General, but was and is entirely on the responsibility of the local inspectors. We also learned at that interview for the first time, and from the same source, that three carloads of the October number of the Woman's Farm Journal are now being held, five weeks after being deposited by us, and postage paid, in the local post office. We also learn from many sources that postmasters have been instructed by the inspectors not to deliver our publications to subscribers unless the subscribers demanded it, and in many cases the subscribers have been told that the "department was having trouble with these papers" and the delivery of the paper refused altogether. We are informed that in one post office our papers

have been altogether withheld from the local subscribers for two months. No notice was given us and no excuse is offered us of the holding up of the three carloads of the Woman's Farm Journal other than that it is at the order of Inspector Fulton.

At the interview of November 11, Postmaster Wyman, on being questioned, refused to take the responsibility for holding up the papers, but stated that he had acted under the orders of Inspector Fulton.

We beg to inquire if any new postal laws or regulations empowering the inspectors to hold up a third of the issue of a publication for five weeks without notice or excuse of any sort to the publisher have recently been passed and on what authority these inspectors are acting.

Realizing that the second-class rights of our papers are in the jurisdiction of your department, and feeling sure that this wanton, destructive, and damaging act is without your knowledge, we respectfully call it to your attention for such action as you may see fit in justice to this corporation.

By referring back to the St. Louis postmaster's letter of November 11 to the Third Assistant (Exhibit 12) it will be noted that no mention was made of the holdup of these three carloads of the Woman's Farm Journal. The letter was written on the same day as the interview was had to which President Lewis was invited, and at which he discovered the holdup, then five weeks old.

It will be borne in mind, too, that, as the record shows, the St. Louis postmaster and the inspectors were at this time sending out "confidential" letters to postmasters, calling upon them to make inquiries of the persons to whom the Lewis Publishing Co.'s mail matter was addressed. They called for information which was "desired by the department," as to whether the parties were receiving copies of the publications regularly, etc.

So far as the office of the Third Assistant was concerned, there was now something of a lull in the excitement. Whatever papers in relation to the case reached the Third Assistant were being promptly shipped to the Postmaster General.

On December 16, the rules for the guidance of publishers, promised Bromwell and Weinschenk July 19, were made public. These were not regulations, but office rules of the Third Assistant. They were published over his name and title. In postal parlance, they were known as "circular 25." The Postmaster General's approval had been given, but nevertheless, as the matter stood, any party aggrieved by the application of those rules to his case, had the right of appeal, under section 16 of the Postal Laws and Regulations, to the Postmaster General, who might amend or reverse the action of the Third Assistant, according to his judgment as to what was proper to be done under the law and facts. But without such an appeal to the Postmaster General, this circular stood as the rules of the department. They superseded all previous rules on the subject, and they allowed the publishers of the country until April 1, 1906, to amend their practices to be in conformity. In the meantime, whatever a publisher's practice, it was by inference not objected to. A compared copy of this circular 25 is herewith submitted, marked Exhibit No. —.

MR. AUSTIN. Mr. Chairman, are these hearings being printed right along?

THE CHAIRMAN. Yes.

MR. AUSTIN. We ought to have those exhibit numbers when the hearings are printed.

MR. MADDEN. I will submit copies of these exhibits.

Mr. AUSTIN. I would like to have those exhibits read as we go along. Then we have the complete case before us.

Mr. MADDEN. Then they will go right into the record?

Mr. AUSTIN. Yes.

Mr. MADDEN. The circular is as follows:

CIRCULAR 25.

POST OFFICE DEPARTMENT,
OFFICE OF THE THIRD ASSISTANT POSTMASTER GENERAL,
DIVISION OF CLASSIFICATION,
Washington, D. C., December 16, 1905.

ABUSES OF THE SECOND-CLASS MAILING PRIVILEGE.

Illegitimate lists of subscribers—What may be included in a legitimate list—Effect of premiums, gifts, combinations, etc.

The second class of mail matter is limited by law to "newspapers and other periodical publications," and the section further prescribing the conditions under which such publications shall be admitted to that class, among other things, requires each to have "a legitimate list of subscribers." The act also prohibits admission to that class of "regular publications designed primarily for advertising purposes or for free circulation or for circulation at nominal rates," even though having a legitimate list of subscribers. The paragraph containing these provisions is as follows:

"Fourth. It must be originated and published for the dissemination of information of a public character, or devoted to literature, the sciences, arts, or some special industry, and having a legitimate list of subscribers: *Provided, however,* That nothing herein contained shall be so construed as to admit to the second-class rate regular publications designed primarily for advertising purposes, or for free circulation, or for circulation at nominal rates." (Act of Mar. 3, 1879, ch. 180, sec. 14; 1 Supp., R. S., p. 246, sec. 428, Postal Laws and Regulations.)

In numerous ways these indispensable requirements as to a legitimate list of subscribers and this positive prohibition against advertising sheets and those sold at a nominal rate or circulated free have been evaded. The result is that publications which are not in fact newspapers or periodicals, combination advertising circulars clothed with just enough reading matter to appear to be periodicals; house organs, and others chiefly designed for advertising purposes and having no legitimate lists of subscribers, and others for which no real subscription price is asked, have secured those rates intended only for real newspapers and periodicals issued in response to an actual public demand, evidenced by the existence of a legitimate list of subscribers at subscription rates fairly indicative that the publications are sold upon their intrinsic worth as newspapers and periodicals.

The devices for evading the law as to actual subscribers and as to the prohibition against circulation free or at nominal rates are mainly—

(a) The inducement of alleged subscriptions by means of premiums, gifts, or other extraneous considerations given by the publishers to the pretended subscribers, the effect of which is that the subscription price is substantially, if not wholly, returned, the advertised price being a mere fiction.

(b) The inducement of alleged subscriptions by so-called clubbing arrangements, the effect of which is that one or more of the publications in the combination are practically given free or at a nominal rate.

(c) The inducement of alleged subscriptions actually given free upon the recipient's signing an order to the publisher alleging payment or making a promise of payment upon which there is no collection and no real intention to collect.

(d) The inducement of alleged subscriptions in connection with the sale of goods the bill for which contains an item for subscription to the publication, which item is only a part of the price of the goods, there being no actual charge for subscription.

(e) Alleged subscriptions which are themselves gifts or premiums given by the publisher to the so-called subscriber in consideration of the purchase of merchandise sold by the publisher in his other business.

(f) Alleged subscriptions of persons whose names have been secured by the publisher from the lists of defunct publications which defaulted on their subscription contracts.

(g) Alleged subscriptions based, without any order, contract, or action on the part of the addressees, upon the sending of copies of publications with a notification that

failure to direct a discontinuance by a fixed date will constitute such addressees subscribers.

(h) Alleged perpetual subscriptions.

(i) Alleged subscriptions for numbers of copies for their patrons or prospective patrons or other third persons by business houses, commission houses, stock exchanges, boards of trade, campaign committees, candidates for office, clubs, organizations, or individuals interested in the circulation of the publication for advertising or other purposes.

(j) The carrying indefinitely on a pretended credit of persons who have once subscribed.

By the foregoing and other means for artificially inflating the circulation of a publication by getting it into the hands of persons free or at a nominal rate and then counting such persons as actual subscribers, for each of whom an additional sample copy may be circulated, abuses of the second-class privilege have been created and maintained.

The object of these artificially forced circulations is nearly always to promote some general or particular advertising purpose or by the appearance of large circulation to be able to demand high prices for advertising. In all such cases the result is the advancement of private interests at the public expense, for all copies sent in the mails in fulfillment of fictitious subscriptions as well as sample copies based thereon are transported at the pound rate unlawfully and at great expense to the Government.

The positive requirements of the law must hereafter be properly observed. Manifestly, if the list of subscribers must be legitimate it must be wholly so. It is not sufficient to have some percentage of the list composed of actual subscribers. The entire list must consist of actual subscribers. The impression that form only need be observed and that substance is immaterial, is erroneous.

In forcing this requirement of law as to a legitimate list of subscribers the following will be recognized as constituting actual subscriptions.

First. Direct subscriptions to the publisher by the subscriber when paid for by him.

Second. Subscriptions to the agent of the publisher when actually paid for by the subscriber himself.

Third. Copies regularly sold by newsboys, or local agents, or news agents.

Fourth. Copies regularly sold over the publisher's counter.

Fifth. Copies sent as bona fide exchange with other publications admitted to the second class, one copy for another.

Sixth. Individual subscriptions designed as bona fide gifts when paid for by the donors for the benefit of the recipients. Such subscriptions will be limited strictly to those coming within that definition, and will not be permitted to be used as a cover for an advertising or other purpose of the publisher or donor. Under this same rule and limitations the publisher himself may become the donor of such gift subscriptions, but in all cases the proportion of these subscriptions to the whole list will be considered and given weight in determining the legitimacy of such lists. In this latter class may be included copies sent to prove insertion of advertisements.

NOTES.

It is not required that subscriptions shall be paid in advance, but where credit is given it is expected to be in the ordinary course of business and not for the purpose of creating fictitious subscriptions or otherwise evading the requirements of the law, as explained in the foregoing. Expired subscriptions may be carried when necessary for a sufficient time to enable the publisher to ascertain whether it is the intention to renew. After the expiration of such reasonable time they will no longer be recognized as actual subscriptions, and in all cases the ratio of expired subscriptions to the whole list, irrespective of the time carried, will be considered and given weight in determining the legitimacy of lists of subscribers and the primary design of the publication.

The inducement of subscriptions by premiums, gifts, service, or other extraneous considerations to subscribers, will be carefully scrutinized in respect of its effect upon the legitimacy of the list as a whole, and upon the question of the primary design of the publication.

The publisher is free to fix his own price of subscriptions, save only that it may not be so low as to come within the prohibitory clause of the statute. It should appear, in order not to fall within that prohibition, that there is a substantial exchange of value in respect of the newspaper or periodical itself between the publisher and the subscriber, under whatever circumstances or in whatever combination the publication is alleged to be subscribed for.

The publisher having fixed the price of his publication will be regarded, in the absence of evidence to the contrary, as having done so in good faith and according to its value. Any reduction, therefore, from such advertised price will be carefully

considered in its bearing upon the question of the primary design of the publication in respect of advertising and its circulation at a nominal rate. Wherever such reduction, by whatever means brought about, is so great that the publication is sold at less than half the advertised price, it will be taken as reducing it to a nominal rate; and in cases where the subscription price as fixed by the publisher appears to be already lower than the customary or general market price for publications of the same class, any reduction from that price, by whatever means brought about, will be taken as reducing it to a nominal rate.

If premiums be used their cost to the publisher is immaterial. Their market value to the recipient will be considered as affecting the price of the publication in proportion. The effect of the premium, gift, service, etc., may not be evaded by the device of placing no market value upon it.

In determining whether or not a publication comes within the prohibitory clause of the statute as designed primarily for advertising purposes, etc., consideration will be given, among other things, to the publisher's methods of securing alleged subscribers through third persons to whom extraordinary offers of compensation in the form of merchandise, etc., are made. Where such compensation, taken at its apparent value, effects a return to the agent of the whole or a substantial part of the subscription price paid, and it appears that the subscribers, knowing that fact, have subscribed really in order to obtain for the agent the benefit thereof, the price paid by such subscribers will be deemed to be affected to the extent of the apparent value of such compensation.

It is unlawful for a publisher or a news agent to mail, ostensibly for himself and at the rates accorded by law to him, as subscribers' copies or as alleged sample, copies of his publication purchased by and really the property of others, and sent in the mails on their behalf. A publisher is not prevented from acting for a purchaser, but the lawful rate of postage—1 cent for each 4 ounces or fraction thereof—must be paid upon all copies so sent in the mails to third persons the same as if they were mailed by the purchaser himself.

In the case of new publications applying for admission to the second class, entry can not be granted unless the legitimate list of subscribers equals 50 per cent of the whole number of copies regularly printed and circulated by mail or otherwise, and to sustain a second-class status at least that proportion of subscribers to the whole circulation must thereafter be maintained.

It is optional with a publisher to print more than enough copies to supply actual subscribers. Copies printed in excess of the number required to supply actual subscribers may, up to an equal number, be mailed at the pound rate as sample copies to persons who are not subscribers for the purpose of getting them to subscribe or to advertise in the publication, provided each copy is plainly marked "sample copy" on the exposed face of the publication or on its wrapper.

Postmasters must bear in mind that in the application of the foregoing, the business methods of the publishers are not, in themselves, subject to interference. Only when the character of a publication or its circulation, as affecting its second-class privilege, is directly in issue is it necessary, as a matter of administration, to consider or inquire what effect, if any, upon such character results from the methods employed. In all cases it is the effect of the method and not the method itself which is the subject of inquiry.

Each case will be decided upon its own special facts, the foregoing circular being designed as a guide to the practical application of the statute in a uniform manner. Strict compliance in all respects with the requirements herein mentioned will not be exacted until after April 1, 1906. But while opportunity is thus to be afforded to publishers fully to adjust their publications to these requirements, this is not to be taken as excusing or condoning either flagrant abuses of the second-class privilege or such as amount to criminal violations of the law; and in every case this department reserves complete liberty of action in protecting the interests of the Government under the law.

Postmasters will at once inform all publishers of newspapers and periodicals in their respective cities of the purport of these instructions.

EDWIN C. MADDEN.

Third Assistant Postmaster General.

Mr. MADDEN continuing: I call your attention to the fact that that circular did not take effect until April 1, 1906.

Mr. AUSTIN. Did that take the place of some then existing rules?

Mr. MADDEN. Yes; superseded them and set them aside.

Mr. AUSTIN. Is there anything in the old circular or regulation with reference to the advertising feature about prohibiting the

publisher of a paper using the mails for the benefit of his own private enterprises as an advertising medium?

Mr. MADDEN. I don't remember that. I have a copy of it and will produce it here.

Mr. AUSTIN. I would like to look it over. It is not necessary that it should go into the record.

Mr. BRITT. But there was a statutory prohibition as to property designed for advertising?

Mr. MADDEN. Oh, we have already gone over that, and it has been explained.

Mr. AUSTIN. That was the law then?

Mr. MADDEN. Yes; the law has not been changed since 1879.

Mr. AUSTIN. Is it a fact that Lewis had advertised in his paper, and was interested in, the following concerns? The United States Stopper Co.; the Peoples United States Bank; the University City Bank; the Peoples Savings & Trust Co.; the American Woman's League; the University Heights Railroad & Development Co.; the Peoples University; the Woman's National Daily; the Lewis Advertising Machine Co.; the Progressive Watch Co.; the California Vineyards Co.; the Chemical Freezer Co.; and many others?

Mr. MADDEN. I believe Mr. Lewis states there are a number of alleged corporations there that he never heard of.

Mr. AUSTIN. Do you know whether in the list I have already named he was interested in those that carried an advertisement in this paper?

Mr. MADDEN. I think I can give you his answer. I see it will take me a little time to find it, but I will say this: That the exact amount of space devoted to the number of times those other institutions were advertised appeared in the report to the Postmaster General dated July 8, 1905, and a comparison was made there with other magazines—Harpers Magazine, McClure's, the Review of Reviews, and many other of the standard publications—showing that the proportion of advertising done by the interests in which Lewis had attested the publication, were not greater than in those cases.

And I will say this, too—I will produce the record later—that where this case was originally tried in St. Louis the judge determined from the exhibits that the advertising done in those publications was no greater in proportion than the others which had been submitted and which were not questioned.

Mr. AUSTIN. There are 18 companies that I enumerated. Do you mean to say that the publishers of the McClure magazine were interested in as many various corporations and companies that were carried in the advertising columns of their magazine?

Mr. MADDEN. Do you ask me whether those advertised at one time?

Mr. AUSTIN. No; in the balance of Mr. Lewis's paper.

Mr. MADDEN. No. Taking, for illustration, Harper's Magazine, I presume that they do not advertise anything but their book business outside of their publication. With the Review of Reviews I think it is the same thing. Butterick patterns are advertised in the Delineator. The Lewis institutions outside of the Lewis Publishing Co. that were advertised were measured up, balanced up, with the amount of advertising space used in the others, and while he may have had a greater variety of kinds of advertising, I do not think that was touched upon,

but merely the question of whether he used space in greater proportion.

Now we are coming to your interesting part, Mr. Austin. The lull had preceded another storm of attack. It broke March 15, 1906. Under that date the St. Louis postmaster again wrote the Third Assistant. A compared copy of this letter and a compared copy of the Third Assistant's letter of transmittal, dated March 17, to the Postmaster General, are herewith submitted.

Mr. AUSTIN. You promised to get us those letters.

Mr. MADDEN. I have them here.

Mr. AUSTIN. I would like to see what the postmaster at St. Louis says about this. I know Mr. Wyman and have a pretty good opinion of him.

Mr. MADDEN. This is not so long a letter, and I ask to have my letter of transmittal read with it.

Mr. AUSTIN. That is all right.

Mr. MADDEN. The letter of the St. Louis postmaster is as follows:

POST OFFICE, ST. LOUIS, MO.,
OFFICE OF THE POSTMASTER,
March 15, 1906.

Honorable THIRD ASSISTANT POSTMASTER GENERAL,
Washington, D. C.

SIR: On November 11 last, I advised you by letter fully of the alleged abuse of second-class privileges by the Woman's Farm Journal and the Woman's Magazine, publications of the Lewis Publishing Co., of this city, requesting instructions as to what action I should take prior to the next mailing of these publications to prevent further loss to the Government in connection with their mailings. I have received no response to this letter.

In the meantime there are being held, under instructions of the post-office inspectors and United States attorney of this district, 65,851 pounds of the October issue of the Woman's Farm Journal, mailed October 5 to 11, inclusive, 1905, aggregating about 300,727 copies.

Later, about December 1, E. G. Lewis and other officers of the Lewis Publishing Co. were indicted and charged with conspiracy to defraud the United States out of large sums of money, and in pursuance of said conspiracy, with mailing, during October, 1905, 300,727 copies of the October issue of the Woman's Farm Journal, aggregating in weight 65,784 pounds, in excess of the number of copies and pounds which they were legally entitled to transmit through the mails at the rate of 1 cent per pound.

They are also charged with the mailing, in pursuance of said conspiracy, during the same month, of issues of the Woman's Magazine for November, 1905, 539,308 copies of said publication, aggregating in weight 107,682 pounds, in excess of the number of copies and pounds which they were legally entitled to transmit through the mails at the rate of 1 cent per pound.

I reported this matter to you under instructions in section 456, Postal Laws of 1902, paragraph 6, with the desire of being instructed as to the treatment of and the postage that should be collected on future mailings of these publications. It has now become important that I be promptly advised as to what postage should be required on the copies of the publications being held in this office, mailed in excess of the number the publishers were legally entitled to mail at the rate of 1 cent per pound, assuming as a basis of your instructions that the number charged was mailed in excess of legitimate mailings.

Very respectfully,

FRANK WYMAN, *Postmaster.*

Mr. AUSTIN. Give me the date of the previous letter he wrote, to which he received no answer.

Mr. MADDEN. November 11 last.

Mr. AUSTIN. Have you got that?

Mr. MADDEN. Yes; that is in the record.

My letter of transmittal is as follows:

MARCH 17, 1906.

The honorable the POSTMASTER GENERAL.

DEAR SIR: I have the honor to hand you herewith a letter just received from the postmaster at St. Louis, Mo. It relates to the Woman's Farm Journal and the Woman's Magazine, of that city, and complains that a former letter, dated November 11 last, has not been replied to.

Owing to the unusual circumstances and the fact that the case of these publications did not originate with, and is not being treated by, the Third Assistant Postmaster General, I referred the letter of November 11 to you, with a request for instructions. You issued none.

In the letter submitted herewith, dated March 15, the postmaster calls attention to the November 11 letter and states that he is still holding the 65,851 pounds of the October issue of the Woman's Farm Journal:

"For the same reasons stated in connection with the reference of the first letter, I shall take no action upon this letter of March 15 until I receive instructions from you; but I deem it proper to invite your attention specially to the last paragraph, from which it might be inferred that specific instructions were issued by this office. Such is not the fact. None were issued. The postmaster appears to be acting under instructions in the Postal Laws and Regulations (sec. 456, especially par. 6) and such others as may have been issued to him by other officers."

Respectfully, yours,

EDWIN C. MADDEN,
Third Assistant Postmaster General.

Mr. AUSTIN. What is that paragraph of Revised Statutes 456?

Mr. MADDEN. Section 456 is a regulation, not a statute. I have it here. Perhaps I had better read it, with your permission, and let it go right into the record.

Mr. AUSTIN. Yes; I wish you would.

Mr. MADDEN. You want the whole?

Mr. AUSTIN. That particular paragraph to which reference is made in the letter.

Mr. MADDEN. I ask you to pay special attention to this:

The mailing by a publisher of sample copies of a larger number of copies than actually subscribed for, in order to maintain a given circulation, or the continuous carrying of sample copies in excess of 100 per cent of the number issued to regular subscribers, or of such copies continuously to the same person, will be deemed evidence that the publication is primarily designed for advertising and free circulation (see sec. 428), and the sample copies should be detained until the fact can be ascertained. The postmaster will promptly report the case to the Third Assistant Postmaster General.

Mr. AUSTIN. The present law is 30 per cent.

Mr. MADDEN. Ten per cent—not the present law, the present regulation. I desire to say that that regulation as read was not of my construction, and I do not believe it is a lawful regulation, because the statute prohibits the delay of any mail matter upon which the lawful postage is paid, and the Postmaster General has no authority to say that you shall hold up any citizen's mail matter as that section directs.

Mr. AUSTIN. Does not that section refer to a section of the Revised Statutes upon which it is based?

Mr. MADDEN. There is no statute upon which it rests, for the statutes forbids that very thing.

Mr. AUSTIN. Did you not so read it?

Mr. MADDEN. That is a general statute creating classes of mail matter.

Mr. AUSTIN. Give me the section referred to in that.

Mr. MADDEN. Four hundred and twenty-eight; that is general law.

Mr. AUSTIN. You criticize that regulation, stating there is no law to justify it upon which it can be based?

Mr. MADDEN. I say the statutes forbid that very thing which the regulation directs.

Mr. AUSTIN. But I thought the regulation there referred to a statute as justifying what it states.

Mr. MADDEN. But it is not a statute concerning the holding up. It is another statute, No. 428.

Mr. BRITT. Is it not a fact, Mr. Madden, that the Postmaster General is forbidden, as well as postmasters, to mail any matter upon which the lawful postage has not been paid, with the single exception as to the payment of one rate on first-class matter, which is not here involved; and that in this case, the Lewis Publishing Co. had by an advance deposit with the postmaster paid the pound rate of postage, in virtue of this deposit on these 300,727 copies, but the postmaster determined that they were not mailable at the pound rate but were mailable at the transient second-class rate, as you are pleased to call it, and demanded that rate of the publishers in addition to the pound rate, or the difference between the pound rate and the transient second-class rate, which additional amount was refused, and the postmaster stated that he held them because the lawful postage, as he classified the matter, was not paid.

Mr. MADDEN. I unhesitatingly say that is not true. I do not think you are misstating it at all, but it is not true. I have read into the record the letter of Mr. Lewis, who said that five weeks after that holdup he discovered it, and that was the first; it was accidental at that.

Mr. BRITT. I am asking you for information.

Mr. MADDEN. You asked if it was not a fact.

Mr. BRITT. That is the way I put the question.

Mr. MADDEN. No, sir; that was a secret holdup, a confiscation not only of the property but of the money paid.

Mr. BRITT. Was it secret in its relation to you? Did not the postmaster inform you?

Mr. MADDEN. No, sir; not until five months after. Then ostensibly he was getting me to determine the rate of postage on those copies.

Mr. BRITT. What was the purport of the letter of November 11?

Mr. MADDEN. The purport of that letter was to tell me they were abused. He never mentioned the holdup in that letter.

Mr. BRITT. I am asking you that.

Mr. MADDEN. No, sir; he never mentioned it. It was one of my wonderments. I called the attention of the Postmaster General to it in my letter of transmittal which Mr. Cortelyou had not replied to, and therefore I did not pay any attention to the postmaster because, as I repeatedly said, I washed my hands of this case October 14, 1905.

Mr. BRITT. Is it not a fact when he advised you, whenever it was—I do not recall the date because I have had no connection with the record—that you did advise him that the rate payable was the transient second-class rate?

Mr. MADDEN. Yes, sir; and I will put in the record in a very few minutes the precise circumstances of the advice.

Mr. BRITT. But you did advise him that the transient second-class rate was the proper rate?

Mr. MADDEN. Yes, sir.

Mr. BRITT. That is what I wanted to find out.

Mr. MADDEN. I did advise him the transient rate was the proper rate under certain circumstances. Now, the circumstances have everything to do with it.

May I go on, now?

The CHAIRMAN. I would suggest this, that you only start to read those matters that you would like to specially call to the attention of the committee, because we have to read this record. We can not form any opinion of it as we go along, as the investigation is being conducted, and it would save lots of time and be far more satisfactory, I am sure, to the committee.

Mr. TOWNER. Before you go on, I was going to suggest this: Let Mr. Madden limit himself to his own statements, and when he comes to a document which he expects to introduce into the record, of course he can have it put into the record in extenso as a part of his statement, but instead of his reading it then and there let him merely refer to it, and let it be put into the record.

Mr. AUSTIN. We have been running in this way now two days, and the understanding in the beginning was that Mr. Madden should have opportunity to read his statement to the committee and that Mr. Britt should have the privilege of answering by reading his. Of course I objected to it in the beginning.

Mr. TOWNER. I do not want to limit him at all to what he wants to say.

Mr. AUSTIN. I am going to be perfectly honest and say that I am not going to read over what I have already heard you read.

Mr. MADDEN. No, I do not think it ought to be necessary.

Mr. TOWNER. I am going to be perfectly honest and say I expect to read it several times.

Mr. AUSTIN. I have not the time to do it.

Mr. TOWNER. You have all the time the rest of us have.

Mr. MADDEN. You can understand, gentlemen, that I shrink from imposing this long tale upon you, but as I see it, it is of great importance, and while I am perfectly willing to submit to your suggestion that I put it in the record bodily—

Mr. TOWNER (interposing). Do not misunderstand me. I do not want to limit you in what you desire to say. I suggest that you go on with your statement and when you come to an exhibit about one of these matters that you are going to incorporate at length in the record, just refer to that in your statement and let it go into the record, so that it may be printed and referred to afterwards.

Mr. MADDEN. But it was in deference to Mr. Austin that I read what has been read.

Mr. AUSTIN. I shall insist on the reading of these exhibits at the various points right here, so that I can get this case in mind, as it goes along. I objected to this mode of doing it. I wanted it all printed in the beginning, so we could read it, but you gentlemen objected to it and voted me down.

The CHAIRMAN. When I supposed his statement would be simply a general statement of the case.

Mr. AUSTIN. The statement in the beginning was there would be 17 pages of it.

Mr. TOWNER. We expected it would occupy only two hours.

Mr. MADDEN. I am not responsible for that. I did explain that this case covered a period of six years, that it would take considerable

time to present it; and I feel that I am bound to make the best presentation of it that I can.

Mr. TOWNER. We do not want to limit you.

Mr. McCoy. My point about that is right here: Mr. Madden reads along and he finally comes to a letter or some document which he refers to as having to do with the case. Now, that is going to be printed as part of our minutes. There may be only a paragraph out of that whole long statement which he would want to refer to for the time being.

Mr. MADDEN. Yes; and that is in this statement I am reading from.

Mr. McCoy. And that you include in your paper you are reading from, and that is sufficient for your purpose.

Mr. MADDEN. Yes, sir.

Mr. McCoy. The whole document can be printed as part of the record, and you get the benefit of it from your own prepared statement.

Mr. MADDEN. Yes, sir; that was my plan.

Mr. McCoy. In other words, it is going back to what we started from; so, when you come to a long exhibit, you would simply say, "This will be offered at the proper time" and mark it exhibit so and so, and you comment upon it all you want to, and if you want to read the whole thing, why read it.

Mr. MADDEN. I do not want to impose on the whole committee.

Mr. McCoy. I mean if you deem it necessary. In other words, I think we were pursuing the most expeditious method before, with all due deference to Mr. Austin.

The CHAIRMAN. Mr. Austin wants them to be read now, because he does not intend to read them hereafter.

Mr. McCoy. I thought we were going to print them.

The CHAIRMAN. We are going to print them.

Mr. McCoy. Then I think the whole business ought to go in.

Mr. AUSTIN. I know, but we ought not to have read a part of the business and print a part of it. Either we should print it all without reading or have it all read.

Mr. McCoy. That would interfere with Mr. Madden's presentation of his case in the way he wants to present it.

Mr. AUSTIN. Then the most complete presentation is to have him read his statements and read the exhibits at the proper place.

Mr. MADDEN. If I had been left to my plan, if you had not asked to have that changed, I would not have read that circular No. 25. I would just have referred to it.

Mr. McCoy. That is what I had in mind. I started to listen to the reading of circular No. 25, and I made up my mind after I had heard a few paragraphs it was something I would have to read carefully at my own leisure to understand thoroughly what was in it.

Mr. MADDEN. The only important part of that is that it was not inaugurated by the department until April 1, 1906, and they were holding up these 300,000 because there were too many copies mailed.

Mr. McCoy. My suggestion was only to save time; that is all.

Mr. MADDEN. I am agreeable to whatever the committee wants.

Mr. McCoy. In other words, the meat of a thing may be buried in 50 pages.

Mr. MADDEN. Yes, sir.

Mr. McCoy. And those 50 pages can be printed as a part of our record here, and if we waited to hear read those 50 pages it would not do you any good.

Mr. MADDEN. No; not any. I do not see how I can shorten the story and tell you all I have to say.

Mr. AUSTIN. It is getting very interesting to me.

Mr. MADDEN. It is an interesting story. I have felt all along that any person who would follow the history of it would find it a most interesting story.

The CHAIRMAN. I suggest you go ahead with your narrative, and when you come to an exhibit unless it is requested, you need not read it all, but merely refer to it, and then it will be printed in the record.

Mr. MADDEN. That would not interfere with my reading a quotation from it as part of it.

Mr. AUSTIN. I promise I will not insist or call for the reading of any exhibit here unless I really want to hear it, and unless I think it is necessary.

The CHAIRMAN. Proceed, Mr. Madden.

Mr. MADDEN. The postmaster complained that his November 11 letter had not been answered by the Third Assistant. The reason for that is already of record.

This letter contains his first notice to the Third Assistant of the holdup of the 300,727 copies of the Woman's Farm Journal in October, 1905. He does not say that anything unlawful to be mailed was inclosed in those copies. The reason given is that they were an excess of the number of copies and pounds which the company was legally entitled to transmit through the mails at the rate of a cent a pound.

The company discovered the holdup on November 11, and complained under date of November, 18. The company's letter is in the record. No notice was given by the postmaster that more postage was required. The following is the postal regulation under which postmasters are, in the ordinary course of business, required to act when matter is mailed with insufficient postage paid:

If any unpaid or insufficiently paid letter or other matter bear the card or address of the sender, or he be known to or can be conveniently ascertained by the postmaster, and is within the delivery of the office, the letter or package will at once be returned to him for proper postage. (Par. 2, sec. 571, P. L. & R.)

The publishers' 1-cent-a-pound rate (about \$700) was paid upon those held-up copies. No service was rendered for this money. The following is the statute on the subject:

Any postmaster who shall unlawfully detain in his office any letter or other mail matter, the posting of which is not prohibited by law, with intent to prevent the arrival and delivery of the same to the person to whom it is addressed, shall be punishable by a fine of not more than five hundred dollars, and by imprisonment for not more than six months, and he shall be forever thereafter incapable of holding the office of postmaster. (Act of June 8, 1872.)

Mr. AUSTIN. Does not that have reference to letter mail?

Mr. MADDEN. It says "letter mail or other mail matter."

Mr. AUSTIN. That is in conflict then with the paragraph of the regulations which you read before.

Mr. MADDEN. That is the one that disputes that regulation, the one to which I referred.

Mr. AUSTIN. Then the Post Office Department had a regulation for the guidance and control of its postmasters that was in violation of the Revised Statutes.

Mr. MADDEN. In violation of that statute, and another one which I do not want to quote. I just leave it out to shorten the record.

Mr. AUSTIN. When did you all find that out?

Mr. MADDEN. I do not think they found it out until after I was out of office.

Mr. AUSTIN. You were in there a long time, and you ought to have found it.

Mr. MADDEN. I knew it. They were acting outside of me. That is what I am complaining about. They did not consult with me. It was my business and they took it away from me, and ostensibly put it back, but not actually.

Mr. AUSTIN. Did you tell them the seizure by the postmaster was in violation of law?

Mr. MADDEN. I don't remember that I did, unless I did it verbally. I don't know whether I did it in writing. It is so manifest that any man from the highest official down to the janitor knows that you can not withhold mail matter like that from citizens. It is robbing them of their property.

Mr. BRITT. You are, in that, as I understand it, describing a case where the postmaster is deliberately and knowingly holding up mail matter. Now, is not that the fact? I am asking this in order to have a clear understanding of the matter; that postmasters, like other public officials, are oftentimes in doubt and have to hesitate and balance one course or the other in their mind for a while; and being human and not knowing everything, they do not know what to do, and if they should often do the wrong thing in such a case, there is no moral blame nor criminal intent attached to their act.

Mr. MADDEN. The acts in this case do not fit any of your descriptions.

Mr. BRITT. The fact remains that you, even, did not know the postage rate——

Mr. MADDEN. Wait until you hear the record.

There is another statute equally severe, except in providing imprisonment, for holding up mail matter by any inspector or any other employee of the postal service. I do not want to quote that, but will do so if you desire.

The CHAIRMAN. But suppose the mail matter had been placed in the office by a business house. He knows the source of it, and he returns it to them, and does not transmit it. What is wrong about it? It was transmissible. The full postage had been paid. He would not be violating a statute, would he, in that case?

Mr. MADDEN. No, sir; not if he had notified the company.

The CHAIRMAN. You claim he did not notify the company in this case?

Mr. MADDEN. He did not notify the company in this case and let them pay the higher rate, if it was legally entitled to be entered. That is it. They secretly held it up. It is in the post office yet, if it has not been burned or destroyed.

Mr. AUSTIN. The postmaster at St. Louis, Mr. Wyman, is required under his oath to observe the postal regulations, and paragraph 6 of Postal Regulation No. 456 made it his duty under the circumstances and the information he had to hold up these papers, did it not?

Mr. MADDEN. The regulation said hold sample copies. They were subscribers' copies and sample copies here. Furthermore, it has been settled over and over again that no regulation can give

power to evade the law, and that the order of the superior officer will not suffice to excuse any man from disobeying the law. That has been settled.

Mr. McCoy. Settled how?

Mr. MADDEN. Recently; in a post-office case.

Mr. McCoy. You mean settled by some court?

Mr. MADDEN. By the court; yes, sir.

Mr. McCoy. Of course, as a legal proposition that is undoubtedly so. A regulation could not be right in the teeth of a statute. On a question of the violation of a criminal statute, if the instruction is from the Postmaster General to a postmaster, it would certainly have some bearing.

Mr. MADDEN. Oh, as to intent. It would have effect as to intent; yes, sir.

Mr. McCoy. Is not your real complaint about this that the law was violated because the matter was held up for five weeks?

Mr. MADDEN. Yes, sir.

Mr. McCoy. Thereby showing it was not just a case where a man was taking a reasonable length of time to determine how he should handle the proposition.

Mr. MADDEN. Yes, sir; that is correct.

The CHAIRMAN. I understand the further complaint is, however, that during these five weeks the Lewis Publishing Co. had no notice that these sample copies were held up for insufficient postage.

Mr. MADDEN. No notice at all, until discovered by accident.

Mr. AUSTIN. You do not mean to say the postmaster at St. Louis did not tell these people why he was holding these papers?

Mr. MADDEN. I do.

Mr. McCoy. Was there not complaint from subscribers of these copies who had failed to receive their papers?

Mr. MADDEN. I believe there was, although I can not state that positively.

Mr. AUSTIN. But you know if several carloads of these papers were held there by order of the postmaster, the most natural thing would be to say to the postmaster, "Why did you hold these papers?"

Mr. MADDEN. He did not know it. They were secreted in the post office.

Mr. AUSTIN. For five weeks?

Mr. MADDEN. Yes, sir.

Mr. AUSTIN. No notice given to him?

Mr. MADDEN. No notice whatever. Lewis happened to be down there at a conference on another matter altogether, with his assistants, and he came to it by accident. Then he wrote that letter which I have already placed in the record and which I transmitted to the Postmaster General immediately, that November 18 letter.

The duty of the postmaster, if he was right that these copies were subject to a higher rate, was to promptly notify the company that these copies were held for more postage and give them the opportunity to pay it. The regulation which I have just read requires that. He did not do that. He held those copies. I say the company was literally robbed of those copies, and I believe that is true.

The CHAIRMAN. Proceed with your statement.

Mr. MADDEN. The following is still another statute having a bearing on this holdup.

When any publication has been accorded second-class mail privileges, the same shall not be suspended or annulled until a hearing shall have been granted to the parties interested. (Act of Mar. 3, 1901.)

From the inspector's later letter, which we are just coming to, it appears that this holdup was on the "suggestion of the United States district attorney." The futility of the company appealing to him for relief will be evident. Under ordinary circumstances, such a holdup, coming to the knowledge of the Postmaster General or any Assistant Postmaster General, the postmaster would be called upon at once for an explanation of his action. Unless it could be justified, he would be removed, indicted, tried, fined, and probably sent to prison in so flagrant and bold a case.

The tone of the postmaster's letter is to the effect that it is important now to be promptly advised as to the postage rate which should be required on the copies of the publication held up, as if he intended to forward them when the rate was determined. So far as known the copies were never forwarded to destination. The postmaster makes this inquiry after they had been lying in his post office five months, and are stale and valueless. Neither were they returned or offered to be returned to the publishing company. Neither was the money taken for postage upon those copies returned or offered to be returned to the company.

Mr. McCoy. Has it ever been?

Mr. MADDEN. No, sir.

Mr. McCoy. You mean to say that \$700 has never been returned?

Mr. MADDEN. No, sir.

Mr. McCoy. Has any demand been made for it?

Mr. MADDEN. I could not say as to that; I did not inquire.

Mr. McCoy. Is there any rule or regulation which would warrant it being kept?

Mr. MADDEN. No, sir.

Mr. Austin. Was that one issue of the paper?

Mr. MADDEN. No, sir; about half an issue.

Mr. McCoy. And that money is still in the hands of the Post Office Department?

Mr. MADDEN. It is still in the hands of the Government.

Mr. McCoy. And this happened six years ago?

Mr. MADDEN. In October, 1905.

Mr. Austin. That was about one-half of an issue?

Mr. MADDEN. An issue is about 600,000 copies, and that holdup covered 300,000.

Mr. Austin. The statement of the postmaster was they were sample copies he was holding?

Mr. MADDEN. Yes, sir.

Mr. Austin. Sample copies that came under that regulation?

Mr. MADDEN. Yes, sir; that was his claim.

Mr. McCoy. Was that \$700 put there for postage on the specific magazines?

Mr. MADDEN. Yes, sir.

Mr. McCoy. That were detained there?

Mr. MADDEN. Yes, sir.

The CHAIRMAN. There were several tons of the matter?

Mr. MADDEN. Three carloads; sixty-five thousand and some hundred pounds.

Mr. McCoy. Do you know whether that money has ever been attached by any legal process brought against the Lewis Co. or tied up by any legal proceedings?

Mr. MADDEN. Only this, that Lewis is suing the postmaster and the inspectors for damage on account of that holdup and the money taken from him, of course, for postage. That is one of the cases that was decided last Saturday by Judge McPherson, who had had the question of the jurisdiction of the court under consideration for three years.

The CHAIRMAN. He did not decide the case on its merits; he remanded it to the State court?

Mr. MADDEN. That is all.

Mr. McCoy. What I am trying to ascertain is this: Is there any reason known to you why the money should not have been returned at the expiration of the five weeks, at any rate?

Mr. MADDEN. Certainly; it ought to have been returned.

Mr. McCoy. Has anything taken place since of such a nature as to prevent the postmaster from returning it?

Mr. MADDEN. Not that I know of, except he has probably turned it in as revenue.

Mr. Austin. Does not the department claim the Lewis Publishing Co. owes them?

Mr. MADDEN. Well, I was advised that they are suing the Lewis Publishing Co. for more than the amount of the postage held up.

Mr. McCoy. Has the Government begun any proceeding of any kind looking to the forfeiture of this \$700?

Mr. MADDEN. No, sir.

Mr. McCoy. Is there any law which you know of which would afford a basis for any proceeding to forfeit this money?

Mr. MADDEN. There is not.

Mr. McCoy. So, so far as you know, or so far as you are informed, there is no reason of any kind or description which would prevent the money being paid over now, or which for all these years would have prevented its being paid back to the Lewis Publishing Co.?

Mr. MADDEN. None whatever.

The CHAIRMAN. Is it or is it not a fact that the Government has a suit pending against the Lewis Publishing Co. for postage, not on this particular issue, but on different issues of their publications, that had been transmitted through the mails by the Post Office Department?

Mr. MADDEN. Yes, sir; that is true.

The CHAIRMAN. For a sum far in excess of \$700?

Mr. MADDEN. Yes, sir; about \$100,000. I think \$130,000.

The CHAIRMAN. Then that may be a reason why the \$700 has not been returned?

Mr. MADDEN. I presume that may be the Government's reason; I don't know.

Mr. McCoy. Is there any rule or regulation or statute by which money deposited under circumstances similar to this could in any way be forfeited to the Government for any reason?

Mr. MADDEN. None whatever. There is a statute drawn by my own hand and on my recommendation which provides for the return of money that was improperly taken for postage.

The CHAIRMAN. When you say "improperly taken"—

Mr. MADDEN (interposing). Well, I mean for a service not rendered. That is the language of the statute. For instance, it sometimes happens that the postmaster will weigh up a piece of mail matter and charge it at the 4-ounce rate. The party mailing it may say, "That is entitled to go as third class," which is half the rate. The dispute may be settled at the department in favor of the complainant. Then the postmaster is ordered to return the balance, the excess that he collected, under this statute, which, I say, I drew myself.

The CHAIRMAN. Did you ever hear or know of any practice in the Post Office Department of retaining money under circumstances similar to this that you have described in this matter?

Mr. MADDEN. No, sir; I do not.

Mr. AUSTIN. Is it not a fact that at the very time the postmaster at St. Louis had this \$700 in his possession, the Government of the United States was claiming a large amount of money from the Lewis Publishing Co.?

Mr. MADDEN. No, sir; it is not. It did not bring those suits for two years afterwards.

Mr. BRITT. Is it not a fact that they revert back to cover this period?

Mr. MADDEN. They do; it is an absurdity.

Mr. MCCOY. Yes, but in the meanwhile there was ample opportunity to have handed back this money. Two years certainly would seem to be time enough.

Mr. BRITT. May I state right there that there were seven suits involving amounts claimed, and that the publishing company claimed a return of \$29,500, and that in submitting a report upon that question of whether those suits were well founded and should be tried it was my insistence that they should be tried for the determination of the rights of the publisher as well as the rights of the Government; that if the contention of the Government was correct, that it could collect the transient second-class rate of postage in the way claimed, it was entitled to recover the amounts sued for. But if the principle of law was not correct, then the Lewis Publishing Co. was entitled to the return of \$29,500. Therefore I said those suits should be tried to ascertain what was due the Government, and if the Government's contention was correct then they were entitled to the sums they were suing for and the Lewis Publishing Co was not entitled to their claim, and on the other hand if the contention of the Government was not sustained, then the Lewis Publishing Co. was entitled to the return of the \$29,000 and could not be compelled to pay the Government's claim. And it all rested upon the final determination of the same question of law.

Mr. MCCOY. Will you ascertain from Mr. Lewis, or remember to ask him the question when he comes here, whether he ever made any demand for the return of this \$700—whatever the amount was—before the beginning of suits against him to recover for alleged excess postage?

Mr. MADDEN. My own judgment is, if you care to have it, that he he did not; that he was so wrought up about it, that he had had to

refund to his advertisers, that it put him in a position of defaulting on his contracts to send out the copies to his subscribers; and that the irritation of the whole matter was so great that I do not think he ever thought of the matter of the \$700 paid for postage on these held-up papers.

Mr. MCCOY. Let us know about it, anyway. It would be an interesting fact to know.

I did not quite understand your statement just now, Mr. BRITT. Did you make the statement that you thought it was legal for the Government to keep this money, or any similar money, provided it had a counterclaim for excess postage?

Mr. BRITT. I did not. This is what I said: That I investigated on behalf of the Government the questions involved in these suits, to a degree, as a special assistant to the Attorney General, with a view of whether or not the Post Office Department should recommend the dismissal of all suits, my own idea being that unless they were well founded in law and fact they should be dismissed.

After I had gone into it pretty fully I found that the Lewis Publishing Co. insisted upon a return of \$29,500 postage that they had been required to deposit by this St. Louis postmaster, he claiming that they were mailing copies in excess of their subscription rights, and their sample rights, equal to a certain amount each month, and required the company to deposit postage to cover that. That postage was never returned to the Lewis Publishing Co. They made a demand for its return and the question was submitted to me as special counsel for the Post Office Department. I looked into it as well as I could, and I came to the conclusion that the law upon which the Government rested its suits for the collection of some hundred or more thousand dollars was the same law as that in dispute between the department and the publishers in the matter of the return of \$29,500.

I stated informally, and my recollection is I stated it in writing, that a try out of all these suits was necessary in order to determine the rights of each party. That is, if the Government was right in its contention the Lewis Publishing Co was not entitled to any return of the \$29,500, and if the Government failed in its contention the Lewis Publishing Co. was entitled to the return of the \$29,500, and I think this \$700 is involved in that, although of that I do not speak with certainty.

Mr. MADDEN. No; it was not.

Mr. BRITT. I am not sure.

Mr. MADDEN. Let me emphasize a point right there. That is manifestly an erroneous explanation. In the circular which Mr. Austin had us read, it gave the publishers a free hand at mailing up to April 1, 1906, with no restrictions. This holdup was in 1905, so that the suits which were brought could not depend or could not collect back of April 1—could not legally do it.

Mr. BRITT. Neither you nor the Postmaster General nor both of you could make any rule or regulation that would stand in the face of the law, whatever that was determined to be. Neither of you could have done it, nor both together.

Mr. MADDEN. If it was practical to allow the whole publishing world to mail without restriction until April 1, 1906, no law was ever

made that would apply a restriction to the Lewis Publishing Co. alone.

Mr. BRITT. There is no doubt about that.

Mr. McCoy. The facts in regard to the \$700 can be ascertained by the Government.

Mr. BRITT. I will be glad to do all I can to get them for you.

Mr. MADDEN. Yes. I will explain why the 300,000 copies were held up. It is coming right along in the statement. They were evidence to be used in the prosecution of Lewis on criminal indictments, as will appear from the letters later on to be read.

The tone of the postmaster's letter is to the effect that it is important now to be promptly advised as to the postage rate which should be required on the copies of the publication held up, as if he intended to forward them when the rate was determined. So far as known, the copies were never forwarded to destination. The postmaster makes this inquiry after they had been lying in his post office five months, and are stale and valueless. Neither was the money taken for postage upon these copies returned or offered to be returned to the company.

Under the same date as the postmaster writes to the Third Assistant, Inspector Fulton writes a "personal" letter to the chief post-office inspector at Washington. The chief post-office inspector sent the Fulton letter to the Third Assistant. A compared copy of the Fulton letter, dated March 15, and a compared copy of the chief post office inspector's reference of the same, March 19, to the Third Assistant are herewith submitted in one, marked "Exhibit No. —."

Mr. McCoy. Now, we want to keep this exhibit business straight. When you said, "Herewith submitted, marked 'Exhibit No. —,'" are you reading from your statement there?

Mr. MADDEN. Yes, sir.

Mr. McCoy. Is there a blank there for the exhibit number?

Mr. MADDEN. Yes, sir.

Mr. McCoy. I would like to know what the exhibit is?

Mr. MADDEN. The exhibit is an inspector's letter dated March 15. I am going to read a quotation from it now.

Mr. McCoy. Read it all.

Mr. MADDEN (reading):

St. Louis, March 15, 1906.

Hon. W. J. VICKERY,
Chief Inspector, Washington, D. C.

SIR: In the indictment against Lewis for conspiracy to defraud the United States it is charged that, in pursuance of a conspiracy, he and others mailed during the month of October 300,727 copies of the October issue of the Woman's Farm Journal, aggregating in weight 65,784 pounds, in excess of the number of copies and pounds which the publishers were legally entitled to transmit through said mails at the rate of 1 cent per pound. It is further charged that during the same month they deposited 539,308 copies of the November issue of the Woman's Magazine, aggregating in weight 107,682 pounds, in excess of the number of copies and pounds which they were legally entitled to transmit through the said mails at the rate of 1 cent per pound, the offense charged being conspiracy to defraud the Government out of the difference in postage on the excess mailings between 1 cent per pound and 1 cent per copy (5 to the pound), or for each 4 ounces, when sent to a single address.

It is necessary in the prosecution of the case to show that the postage on these excess mailings required by the department to be paid (assuming we prove a mailing in excess of the number to which the publishers are entitled) is 1 cent per copy, or for each 4 ounces, when sent to a single address.

In the preparation for trial by Inspectors Sullivan, Stice, and Reid, involving a careful examination of the postal laws on this point, it develops that there is an apparent failure to specify the exact course to be pursued by postmaster in the way of collection of postage on abuse such as the one now in court. Paragraph 5 of section 456, Postal Laws, states in substance that the postage of 1 cent for each 4 ounces is required on extra copies sent by the publisher when acting for an advertiser or purchaser, or where he issues a large edition containing an article intended to advance private interests, or where advertisements were secured under an agreement to distribute a given number of copies in excess of number of subscribers. It has apparently been left to paragraph 6 to deal with such cases as the one now at court, where a publisher is mailing as sample copies a larger number than actually subscribed for in order to maintain a given circulation, and is continuously mailing them in excess of 100 per cent of the number issued to regular subscribers, and this paragraph provides that copies shall be detained until the facts as to whether the publication is primarily designed for advertising or free circulation are ascertained, and the postmaster is instructed to promptly report the case to the Third Assistant Postmaster General. There is absolute silence as to what postage is chargeable on these excess mailings described in paragraph 6. Postmaster did report these facts November 11, 1905, to the Third Assistant Postmaster General, but received no reply.

As you know, under the suggestion of the United States attorney and the directions of this office, the postmaster here is holding, as evidence, 65,851 pounds of sample copies of the October issue of the Woman's Farm Journal, mailed in excess of those actually subscribed for in order to maintain a given circulation, a portion of which publications being held are so marked "sample copies." The item consists of 38,865 pounds marked sample copies and 28,986 pounds sample copies not so marked. The legitimate mailings of that issue, including one sample copy for each legitimate subscriber, was 61,831 pounds. The copies being held were mailed in excess of the number of legitimate subscribers, including sample copies, last given.

What the attorneys will need as evidence through the postmaster will be the postmaster's testimony to the effect that the legal rate chargeable on these publications mailed in excess of the number to which the publishers were entitled is 1 cent per copy, (or for each 4 ounces), when sent to a single address. The postal laws being silent on that direct proposition, it is necessary that he be instructed by the proper officer of the department either to that effect directly, or to the effect that the same postage is applicable as is required under paragraph 5 of section 456, postal laws, which refers to abuses of similar character. I have requested the postmaster to this day make this inquiry direct to the Third Assistant Postmaster General, and it is desired that you take the matter up with the proper officer, that such instructions may be given the postmaster as is necessary to enable him to properly act and testify on a matter not made clear by the existing regulations.

Very respectfully,

R. M. FULTON,
Inspector in Charge.

P. S.—Carbon copy of the postmaster's letter to the Third Assistant Postmaster General has been handed me, and is inclosed herewith for your information.

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Mr. AUSTIN. What is the date of that letter?

Mr. MADDEN. March 15, 1906. Then there follows this indorsement:

MARCH 19, 1906.

Respectfully referred to Third Assistant Postmaster General (Classification Division), with request that proper action be taken.

E. G. LEWIS PUBLISHING CO.,
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I desire to state in the record again, which I have not in the printed form, or at least call attention again to Circular 25, dated December 10, 1905, which gave the publishers the liberty of mailing as they

pleased until April 1, 1906; but that here, in spite of that, they had indicted these men for an alleged conspiracy to mail too many copies.

Further than that, it was on the theory that the law limited the copies, which the law does not do, and further than that, they sought to charge as criminal the mailing of these copies at a cent a pound, and claimed they should have paid at least 4 cents a pound, when the rate, in the language of the statute, is for others than the publisher.

The CHAIRMAN. In other words, there is no specific statute providing for the rate when they do send out copies in excess of the number authorized by law?

Mr. MADDEN. No, sir. That was apparently an invention of mine for administrative purposes, to which I am coming.

Mr. BRITT. But you did collect postage under it.

Mr. MADDEN. I will get to that. That is in my statement here, and I will make it perfectly clear, unless you want me to go into it now.

Mr. BRITT. Not at all. I am just asking you for information, to keep the record clear. I do not care where or when it is given.

Mr. MADDEN. From these two letters, the first from the postmaster, and the second from the inspector, it appears that Lewis and other officers of the company were indicted about December 1, 1905, "for conspiracy to defraud the United States," by mailing at the publishers' rate of a cent a pound 300,727 copies, 65,784 pounds, of the Woman's Farm Journal (those copies held up in the post office), and 539,308 copies of the Woman's Magazine, the latter not held up.

It is not denied that the copies upon which the indictments were secured were matter of the second class. The basis of the indictment is that "the form of the statute in such case made and provided" limited the number of copies and pounds which a publisher might mail at a cent a pound, and that an excess of those limits had been mailed at that rate. The following are the statutes fixing all of the rates of postage for second-class mail matter:

All publications of the second class, except as provided in section 25 of said act (of Mar. 3, 1879, ch. 180, 1 Supp., 249), when sent by the publisher thereof, and from the office of publication, including sample copies, or when sent from a news agency to actual subscribers thereto, or to other news agents, shall * * * be entitled to transmission through the mails at 1 cent a pound or a fraction thereof, such postage to be prepaid as now provided by law. (Act of Mar. 3, 1885.)

Now, in that connection, I say every lawyer knows that when a statute, general in its terms, makes exceptions to its general terms, that all not included in the exceptions is included in the general terms; and that it was lawful for that publishing company to mail all the copies it pleased, without limit, at a cent a pound, except under those exceptions. The device of limiting sample copies was my own invention, which will come later as an explanation.

Mr. McCoy. You say there was no law then to limit the sending of sample copies.

Mr. MADDEN. No, sir. The indictment that says the statute limited it is false and fraudulent; there never was such.

Mr. AUSTIN. But there was a postal regulation that limited the number?

Mr. MADDEN. No, sir.

Mr. BRITT. What is section 426?

Mr. MADDEN. They might hold them up to determine whether they were of a certain class or not.

Mr. AUSTIN. But you said this afternoon there was a limit on the number of sample copies.

Mr. MADDEN. We fixed a limit, but there was no regulation. It was merely my office ruling.

Mr. MCCOY. But you could not indict on it?

Mr. MADDEN. No, sir.

Mr. REDFIELD. It was subsequent to this date, anyhow?

Mr. MADDEN. Yes, sir.

The CHAIRMAN. As I gather from that last letter read, the authorities in St. Louis were writing here to the department at Washington to know what the rule of law would be to apply in this conspiracy case.

Mr. REDFIELD. They could not find any on which to justify their indictment.

Mr. MADDEN. After they had their grand jury solemnly sworn to indict three American citizens for mailing too many copies, they found upon careful search of the postal regulations that the regulations were silent upon that proposition.

Mr. AUSTIN. But really was there not a provision at that time to the effect that a publisher could not send out sample copies exceeding 100 per cent?

Mr. MADDEN. No, sir.

Mr. AUSTIN. But I thought you admitted this afternoon there was, and that since that time the number had been cut down to 30 per cent.

Mr. MADDEN. Ten per cent. I say that I operated my limitation, which I will explain later, or will do now if it is desirable. As I explained, I acted within the law by simply intimidating publishers to keep within that limit by the threat of a citation to cut out as second class if they exceeded it, but I never held up a publisher. He could mail all he pleased at a cent a pound if he insisted upon his right to do so.

Mr. BRITT. Let me ask you if it is not true that under the authority of the threat you collected postage from sundry and divers publishers, turned it in as a part of the postal revenues of the Government, and yet you say you were doing it without authority of law?

Mr. MADDEN. Yes, sir; I will explain that.

Mr. BRITT. But you did it. Is it not a fact?

Mr. MADDEN. It is a fact, but not as you state it.

Mr. BRITT. Is it not a fact you collected it?

Mr. MADDEN. When they voluntarily paid it rather than be cited.

Mr. BRITT. One moment. Let me ask you this question. I am asking it for the benefit of this record. If you did not administer the statutes and regulations as Third Assistant Postmaster General and collect and turn into the postal treasury postage collected at the rate of 1 cent for each 4 ounces or fractional part thereof, and that money was finally made a part of the public treasury? Is not that a fact?

Mr. MADDEN. My answer to that is this—I will explain this limitation now: I was conducting a reform of abuses of second-class mail matter. Prior to my going into the department there were a number of abuses complained of in the annual reports. Among them was the

mailing of large quantities of sample copies of immaterial lists of subscribers. Postmaster General Smith asked me if I could not do something with that. I told him I thought it was a doubtful proposition, but I was going to look into it, and discovered that I might, under the prohibition clause of the statute, which says:

Provided, however, That nothing herein contained shall be construed as to admitting to the second-class rate regulation publications designed primarily for advertising purposes or for free circulation or for circulation at nominal rates.

I said under that clause I believed I could construe the act so as to limit sample copies to 100 per cent of the subscription lists—that is to say, for every subscriber one sample—and that if the publisher exceeded that number I would hold that his publication was primarily designed for free circulation, and put him out of the second class. In the great field of publishing that there is in this country many people unintentionally violate regulations and laws, too, for that matter, with regard to service. We got the publication of this ruling out as soon as possible and the moral effect was good. Publishers sought to obey. But every now and then some publisher would violate the rule and come to the post office, where he would be met by the postmaster's limitation.

Now, my attitude was this, that the publisher could avoid a citation and the possible ruling of his publication out of second class altogether, by voluntarily paying that excess rate upon the excess copies; but never on the record anywhere will you find I ever said he must do it against his will.

Mr. BRITT. According to your construction of the law, you say you were without authority to do it, and yet you did it. Let me ask you if that does not have the effect of requiring the publisher to pay a sum of money into the Treasury of the United States in order to escape a citation and a hearing and the exclusion of his publication? Is not that the effect?

Mr. MADDEN. The effect of it is, and perhaps I was wrong in doing it—I do not claim to be right——

Mr. BRITT (interposing). Is not that the fact?

Mr. MADDEN. The effect of that was it saved them the citation. Every publisher dreaded a citation because he did not know what the result of it would be, and I would say to them, "You pay this rate and this question is disposed of." That always had the effect of preventing any trouble with that publisher, and in that way I kept that limitation down to 100 per cent. There were very few exceptions to that rule.

Mr. BRITT. I have collected it myself; I have collected postage of the same nature myself, but I did it with the idea, and I am still of that opinion, that I was within legal authority, and Mr. Justice Claibough, of the District Supreme Court, so held.

Mr. MADDEN. I beg your pardon; he did not so hold.

Mr. BRITT. He did in effect; and Mr. Justice Van Devanter, as a member of the Court of Appeals of the Eighth Circuit, so held.

Mr. MADDEN. I will differ with you on that.

Mr. BRITT. And I am collecting it under the notion that I am within the law. I am anxious to keep within the law.

Mr. MADDEN. I will say that what is morally wrong can not be legally right. I say that my act was morally right, but it was legally

wrong. I had the choice of doing the thing and correcting the abuses, or letting them go at liberty for what number they pleased to carry; and it was the desire of the administration, of the Postmaster General, that I try it out. I tried it and it was successful. Since that they have limited it to 10 per cent, and now I presume they will indict a man because he exceeds 10 per cent. I do not know that I have heard of any such indictment, however.

Mr. McCoy. I suppose if there was not legal authority to prescribe a limit it does not make much difference whether you make it a hundred per cent or 10 per cent.

Mr. MADDEN. No; only I had back of me the clause in the statute that a publication primarily designed for free circulation was not admissible, and I made my ruling upon that, that a publisher who exceeded one sample for one subscriber had a publication that was primarily designed for free circulation.

Mr. McCoy. That is, the department itself now says that 10 per cent is *prima facie* evidence—

Mr. MADDEN (interposing). No; they abandoned that clause, because 10 per cent would not equalize.

Mr. McCoy. What clause do they go on now?

Mr. MADDEN. I do not think they have any clause.

Mr. BRITT. May I ask what that point was? My attention was distracted for a moment.

Mr. MADDEN. The point is this: I based my limitation upon the prohibition clause of paragraph 4 of section 428, which prohibits a publication designed for free circulation—

Mr. BRITT (interposing). I understand.

Mr. MADDEN. And that I was applying, after consultation with the law officers and others, putting that limitation upon it. I will say, too, that Mr. Charles Emory Smith, then Postmaster General, wanted me, sought to have me, place a 10 per cent limit upon the sample copies, and I advised him in my judgment it could not be done because the clause on which I depended was not available.

Mr. BRITT. I did not want the statement made that we had no rule. I think that is evidently unfair. I am anxious to get these things straight. The present rule or limitation is 10 per cent of the number sent to subscribers, and in the few instances in which the transient second-class rate has been collected since I have been at the head of the bureau of the Third Assistant—and they have been very rare indeed—it has been upon the conviction that the law supported that course. I believe that view is entertained by lawyers whose opinions are entitled to very high consideration. And that the 10 per cent limitation is not used for the purpose of ruling the publication out, as primarily designed for advertising purposes and that in that particular I throw myself entirely upon the statute.

The CHAIRMAN. The whole question, it seems to me, turns upon section 448, which provides:

All publications of the second class, except as provided in section 25 of said act (of Mar. 3, 1879, chap. 180, 1st Supp., 249), when sent by the publisher thereof, and from the office of publication, including sample copies, or when sent from a news agency to actual subscribers thereto or to other news agents, shall be entitled to transmission through the mails at 1 cent a pound, or fraction thereof, such postage to be prepaid as now provided by the law.

Now, you say that there is no law authorizing the Postmaster General by regulation to limit the number of sample copies?

Mr. MADDEN. Yes, sir; I do say so. I do say that the act of classifying mails is one thing, and that when a publication is classified as of the second class that the statute of 1901 protects the publisher in that privilege, and it may not be suspended or annulled without a hearing. If it can not be suspended in whole, it can not be suspended in part. I say that statute which you have just read, making its own exceptions to its general terms, includes everything not within the exceptions, and that there is no form of statute as alleged in those indictments or in any ruling, limiting the publisher at 1 cent a pound except as provided in that statute.

The CHAIRMAN. In other words, if he has a thousand bona fide subscribers he could send 10,000 sample copies at the 1-cent rate?

Mr. MADDEN. Ten million, so long as his publication was of the second class. That is the law.

Mr. McCoy. And primarily intended for advertising.

Mr. MADDEN. After a judgment in the department or wherever the judgment is to be rendered, that it was primarily designed for free circulation and advertising purposes, or was not of second class, then he had no right at all in that class.

Mr. McCoy. I was going to ask whether the decision of the postmaster that if it was not intended or designed for regular circulation and was designed for advertising, whether that could be reviewed any way?

Mr. MADDEN. I am glad you asked that question. One of the greatest grievances of the publishers of this country that I know of is the fact that an act of that kind involving the exercise of discretion on the part of the Postmaster General or the Third Assistant for him can not be reviewed successfully because they are unable to go into court or before the courts with analogous cases where the same rule has been applied, and it has repeatedly been said by judges on the bench unless the rules are universally applied it is not the law. Over and over again that has been stated. You can not prove your case to be an exception because you can not get the records. Therefore a great injustice may be done.

Mr. McCoy. I was not asking in reference to any exceptional case, but the ordinary rule is where a judge, for instance, has the right to exercise so-called legal discretion, there is a limit beyond which he can not go arbitrarily. In other words, it has to be discretion according to law.

Mr. MADDEN. Yes, sir.

Mr. McCoy. And that judicial discretion can be passed upon, say, by an appellate court. Now then, the question with me is, is there any procedure by which an alleged abuse of administrative discretion, if you please, can be reviewed by the courts?

Mr. MADDEN. I answer that by saying, of course, a publisher has access to the courts, and he may call the Postmaster General to account in the courts; but the Postmaster General's defense is always that it was matter involving his discretion and the determination of the facts by him, and the courts have repeatedly held that such a determination is not reviewable.

Mr. BRITT. You are in error there.

Mr. MADDEN. Then I ask the gentleman to correct me.

Mr. McCoy. I mean taking the question of facts, the facts have been established, we will say, beyond any controversy. Is a ruling by the Postmaster General on those facts admitted, if you please, to be subject to review by any court?

Mr. MADDEN. No; I do not think they are, unless it is for fraud.

Mr. McCoy. No; a mere question of classification or this question as to whether a publication is primarily intended for advertising.

Mr. MADDEN. It is not reviewable as the law stands, in my judgment. It is not reviewable, and I think my experience has proven that, although in this case, when the publications were ruled out of the second class on March 4, 1907, Lewis did go to the courts and seek to have a restraining order issued. The effect of that was that they presented copies of the publications for the review of the court, and other publications passing in the mails without any question by the department, and the court remarked in its decision that the proportion of advertising was not greater in those, and if one was primarily designed for advertising purposes then all were, and that it did not think that was a just reason of primary design any more than the others.

Mr. McCoy. Did the court reach any other decision on that basis, deciding between these two magazines, that one was or one was not, or that both were or were not?

Mr. MADDEN. I was coming to that in my statement. I have the judge's decision, not a certified copy, but a carbon copy; and if you will permit me until to-morrow I will read that here to-morrow.

Mr. McCoy. I am asking simply to get this thing cleared up.

Mr. MADDEN. The court has held, I might remark here, that in the case of the first indictment that has been mentioned here that Lewis and others had exceeded the limitation; the court held that the law did not limit the number of copies that a publisher might mail at a cent a pound; that he was at liberty to mail all he pleased, and dismissed the indictment on demurrer. They immediately went and got another indictment to the same effect, and that was dismissed on demurrer. Then they got another one to the same effect.

Mr. REDFIELD. Three?

Mr. MADDEN. Three in all. The first two were dismissed. I have certified copies of the court record. The third one was gotten up in 1907 for acts alleged in 1905; simply new indictments of the same thing each time differently worded.

Mr. McCoy. Who instituted the proceedings, the district attorney in St. Louis?

Mr. MADDEN. Of course they bore the signature of the district attorney, but if you want my belief on the subject I think you will find the post-office inspectors drew those indictments.

Mr. McCoy. I mean the legal authority to bring the matters to the attention of the grand jury.

Mr. MADDEN. Oh, the district attorney; that was his duty.

Mr. McCoy. In St. Louis?

Mr. MADDEN. Yes, sir.

Mr. REDFIELD. What became of the third indictment?

Mr. MADDEN. It was dismissed later.

Mr. REDFIELD. All these three fell to the ground?

Mr. MADDEN. Yes, sir.

Mr. REDFIELD. Except so far as they may have had an injurious effect on his credit?

The CHAIRMAN. Mr. Blodgett was district attorney?

Mr. MADDEN. The first two indictments were signed by Judge D. P. Dyer; the subsequent one was by Mr. Blodgett.

Mr. AUSTIN. I move that the committee take a recess until 8 o'clock to-night.

(The question was taken and the chairman declared the motion defeated.)

The CHAIRMAN. Proceed, Mr. Madden.

Mr. MADDEN. I just read the statute which you quoted, and now I will read the exceptions:

That publications of the second class, one copy to each actual subscriber residing in the county where the same are printed, in whole or in part, and published, shall go free through the mails, but the same shall not be delivered at letter-carrier offices or distributed by carriers, unless postage is paid thereon at the rate prescribed in section 13 of this act (the cent-a-pound rate): *Provided*, That the rate of postage on newspapers, excepting weeklies, and periodicals not exceeding 2 ounces in weight, when the same are deposited in a letter-carrier office for delivery by its carriers, shall be uniform at 1 cent each; periodicals weighing more than 2 ounces shall be subject, when delivered by such carriers, to a postage of 2 cents each, and these rates shall be prepaid by stamps affixed. (Sec. 25, act of Mar. 3, 1879.)

I hold those are the only exceptions the law makes to the 1 cent a pound rate when matter is sent by the publisher and from the office of publication, if it be second class.

Now, the next and only other rate on second-class matter is the act of 1884:

The rate of postage on newspapers and periodical publications of the second class, when sent by others than the publisher or news agent, shall be 1 cent for each 4 ounces or fractional part thereof, and shall be fully prepaid by postage stamps affixed to said matter. (Act of June 9, 1884.)

That is the statute which fixes the rate upon newspapers and periodicals of the second class when mailed by the general public. They may be found in the post boxes, mail boxes anywhere, just as you often probably have mailed a newspaper and put a stamp upon it. The balance of the matter is mailed from the office of publication and there the other statute applies.

It has been shown in connection with the regulations which have been quoted that the question of whether a publication is "mailable matter of the second class" is determined at the department and not at the local post office. A publication having been classified or admitted to be mailable matter of the second class is protected in the right to be so mailed by the act of 1901, which prohibits the suspension or annulment of the privilege without a hearing to the parties interested.

No hearing had been given the company on the question of suspending in part its right to mail its entire output of magazines at publishers' rates. No notice was given to the company that its right to mail at publishers' rates was limited and that copies in excess of the limit were subject to a nonpublishers' rate.

The duty of the postmaster, under the law, is plain. It is to charge the lawful rate, the rate fixed in the statute, for matter of the second class. He can not charge a rate fixed for some other class. In the plain language of the law, when the matter is sent by the publisher thereof and from the office of publication or is sent by a news agent,

it is "entitled to transmission through the mails at 1 cent a pound or fraction thereof" regardless of the number of copies in a pound, except that copies addressed for delivery by the letter carriers of the office of mailing must be prepaid by stamps affixed, and copies so prepaid are not included in the bulk weight mailable at a cent a pound or fraction thereof, and except that certain copies addressed to subscribers residing in the county of publication are free of all postage.

When copies are sent by "others than the publisher or news agent," the rate is 1 cent for each 4 ounces or fraction, and this rate is uniformly charged regardless of address and must be prepaid by stamps affixed.

Postmasters have no difficulty in determining who the sender of second-class matter may be. The regulations require publishers to mail their matter at a certain place in the post office set apart for them, where it is weighed and the postage paid in money, except on the certain copies required to be prepaid by stamps affixed, as explained. Copies mailed by others than the publisher or news agent may be found in the mail boxes wherever it is customary for the general public to deposit its mail matter.

This indictment charges that these so-called excess copies were mailed in "pursuance of said unlawful felonious conspiracy, combination, confederation, and agreement" of the persons charged therein. As the laws read and as they have been administered since their passage, it was the lawful privilege, the right of the Lewis Publishing Co., to mail copies without limit and to mail weight without limit, at the rates fixed in the statute for it as a publisher, so long as its publications were "of the second class."

This indictment was demurred to by the attorneys for the publishing company. The demurrer was sustained on May 17, 1907. Among other things, the court in its memorandum on the demurrer said:

It will be noticed that there is no limitation in the act of March 3, 1885, as to the number of copies of such publications which may be sent through the mails at second-class rates, nor does the act limit copies to subscribers solely, but grants the privilege to all "publications" of the second class, including sample copies. * * * It (the indictment) fails to allege anything which warrants the conclusion that legally the publishers could not transmit through the mails all the copies which they did send. There is nothing to indicate why these copies were in excess of the number of copies which they were legally entitled to transmit at the rate of 1 cent per pound.

This indictment, filed December 1, 1905, solemnly charges that Lewis and others conspired to mail 300,729 copies or 65,784 pounds of the Woman's Farm Journal and 539,308 copies or 107,862 pounds of the Woman's Magazine, to be mailed at the rate of a cent per pound, "contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States."

Mr. McCoy. Was that indictment found after the letter written by this man out in St. Louis to the chief inspector here?

Mr. MADDEN. The first indictment was found before the writing of that letter and the two subsequent ones afterwards.

The CHAIRMAN. That indictment was held insufficient because it did not allege that the publisher under the law might publish a certain number of sample copies, as I understand.

Mr. BRITT. It was held to be invalid because of the fact that it was based upon a regulation and not upon a statute.

Mr. McCoy. But the point is the first time they decided they may have been mistaken, but the second time they apparently knew

there was no law for it because they wrote a letter to ask Washington what the law was.

Mr. REDFIELD. How do you explain coming back at the man with a second indictment right away, in view of the fact that the second indictment was knocked out by the court and therefore had no legal basis.

Mr. BRITT. I answer that by saying I do not think any criminal indictment can be predicated upon departmental regulations of any kind, and that therefore the indictments in so far as they were predicated upon that regulation were not supportable at law at all. That is, the regulation having reference to sample copies. I have never seen these indictments and do not know what other allegations were made, but my opinion is if they rested solely upon the regulation that they were not legally supportable.

Mr. REDFIELD. But as bearing upon the allegation made here before the committee of conspiracy, or of a desire to hound this man, what is the committee to infer from the fact that just as fast in these cases as the court sustained the right of the defendant, another indictment of the same kind was found right away? Is the committee to infer what would apparently be the normal inference from that sort of thing, namely, that here was a determination to get this man in some way? Just as fast as the court can set him free, he is called up again. I think that requires explanation.

Mr. BRITT. You understand my position here is not that of an advocate, but merely as representing the department to assist in the explanation of the record of the case as presented. I do not know that all of these three indictments were founded upon the same charge. If the first one was predicated solely upon a regulation, in my opinion it was an invalid indictment, and if the second and third were also predicated upon it solely, in my opinion they were also invalid. I see no reasons for the second and third, assuming these are the facts.

Mr. MCCOY. Do you know whether the department issued any instructions to the district attorney at St. Louis?

Mr. BRITT. None to my knowledge of the record.

Mr. AUSTIN. The Assistant Attorney General for the Post Office Department can give all the information as to these indictments.

Mr. BRITT. Yes.

Mr. TOWNER. The indictments can not be found from the determination of the Post Office Department. They have to be found upon the determination of the Department of Justice. It is not at all improbable that the Department of Justice having these indictments returned in this way were advised what the law was in this case. They were determined upon demurrer.

Mr. AUSTIN. The Assistant Attorney General for the Post Office Department has an office in the Post Office Department, although he is a subordinate of the Attorney General, and when Inspector Fulton, of St. Louis, wrote in here for information with reference to the matter of indictment, that letter was probably referred to the Assistant Attorney General for the Post Office Department, and there would be a record in his office of this entire proceeding as to these indictments.

Mr. TOWNER. I would like to ask Mr. Madden a question in connection with that: While, Mr. Madden, you and all of us concede that no indictment of criminal prosecution could be based upon

circular regulation of the department, is it not true that a circular regulation of the department is binding upon all those who have dealings with the Government in the determination of the classification or arrangement for postage?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. Then it was entirely within the right of the postmaster at St. Louis to act in holding up this mail if he had reasonable grounds for believing that the number of sample copies were in excess of the 100 per cent allowed by the circular?

Mr. MADDEN. Yes, sir. Permit me——

Mr. TOWNER (interrupting). I understand your position. Your position is he had no such information.

Mr. MADDEN. No, not that exactly. My position is that I had made that limitation and had administered it in all cases except this one. If he had a reasonable ground for believing that the limitation was exceeded there, and had reported to me in due course the situation, I would have called upon the Lewis Publishing Co. to prove its right to mail all those, or to be cited. That is the point. Is that all, Mr. Towner?

Mr. BRITT. Is not consideration in relation to the postmaster to be given to the fact, if it be a fact, that the district attorney demanded that these be held?

Mr. MADDEN. Yes; I think that would let the postmaster out a little bit if the district attorney did say so. I have simply read that from the letter. I doubt whether any district attorney would say so. Maybe he did.

Mr. McCoy. It might let him out on the question of motive, but not on the question of legal right.

Mr. MADDEN. Not at all.

Mr. REDFIELD. I think from a layman's point of view it requires a thorough explanation, affirmative evidence of good faith, to explain this threefold series of repeated indictments, one after the other.

Mr. McCoy. It is not an unusual thing for an indictment to be dismissed and a new indictment to be drawn to meet the defects.

Mr. REDFIELD. Changed according to the demurrer.

Mr. McCoy. Yes.

Mr. REDFIELD. Certainly.

Mr. McCoy. To meet the defects in the first indictment.

Mr. REDFIELD. Certainly.

Mr. McCoy. They might draw a second defective indictment——

Mr. REDFIELD. Yes.

Mr. McCoy (continuing). On facts which constitute an admitted crime, and have to draw a third one; yet the point that Mr. Madden makes here is that the indictment in the grandiloquent form of indictments charges them with having violated the statute "in certain cases made and provided." The first time that might have been all right, but after that first indictment was dismissed and before the second indictment the Government official writes here and says: "We do not find any law for this indictment;" and then they go on and indict.

Mr. REDFIELD. That is what I mean.

Mr. BRITT. I do not know the facts. I gave the Congressman a candid explanation upon an assumption of the facts. I do not know the facts myself.

Mr. McCoy. Mr. Redfield says the matter is one for some explanation.

Mr. BRITT. I gave the best explanation I could from my understanding of the record.

Mr. AUSTIN. I ask that the Assistant Attorney General for the Post Office Department be examined on that point to clear it up if he can later on.

The CHAIRMAN. Proceed, Mr. Madden.

Mr. MADDEN. At this point I wish to place in the record an affidavit by Mr. J. A. Jacobsmeyer concerning this matter.

Mr. AUSTIN. What is the nature of it?

Mr. MADDEN. It is regarding a declaration by one of the inspectors in connection with one of these Lewis matters.

The CHAIRMAN. Read it.

Mr. MADDEN. It is as follows:

STATE OF MISSOURI, *County of St. Louis, ss.*

J. A. Jacobsmeyer, being duly sworn on his oath, deposes as follows:

I am of legal age and a resident of the county of St. Louis, State of Missouri, having resided in said county during the last 42 years; I am assessor of taxes for the said county of St. Louis, State of Missouri, which office I have held for two years last past. On or about the 29th day of October, 1907, while I was engaged in my duties as tax assessor at my office in the St. Louis County courthouse at Clayton, a man entered my office and introduced himself to me as one William Sullivan, stating himself to be an United States Government inspector, connected with the St. Louis (Mo.) post office; said Sullivan further stated to me that he was engaged on the case of the United States Government against Edward G. Lewis, then pending in the United States circuit court, for alleged fraudulent use of the United States mails in promoting the Peoples United States Bank, and thereupon said Sullivan requested me to make certain examinations of the tax records of the county of St. Louis with reference to property owned by said Edward G. Lewis in the years 1901, 1902, 1903, and 1904. In the course of conversation in reference to such examination of said tax records I asked the said William Sullivan "What are you inspectors trying to do with E. G. Lewis?" The said Sullivan thereupon replied in the following words: "We won't quit on Lewis until we have landed him in the penitentiary." Said Sullivan shortly after making this statement to me left my office.

And further deponent saith not.

J. A. JACOBSEMEYER.

Subscribed and sworn to before me this 11th day of December, 1907.

[SEAL.]

WILLIAM H. BARNES,

[Notary Public within and for the County of St. Louis, State of Missouri.

My commission expires May 30, 1908.

Mr. TOWNER. Before adjournment there are two or three questions I would like to ask. It is with regard to the method of the examination. Mr. Madden, I call your attention to the printed copy of the charges that you have presented before the committee in which they are specifically numbered, commencing on page 631 of our reports. You recognize that paper [indicating]?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. I would like to know whether you would have any objection to following these charges specifically and seriatim in the submission of your proof, after you are through with your statement.

Mr. MADDEN. Oh, no, sir. I expect to do that.

Mr. TOWNER. You will do that?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. The committee I think will be glad to have you, so that we can keep track of it ourselves, and so perhaps eliminate repetition.

Mr. MADDEN. I am fully prepared for that.

The CHAIRMAN. I desire at this time to read the following letter:

OFFICE OF THE POSTMASTER GENERAL,
Washington, D. C., July 11, 1911.

HON. WILLIAM A. ASHBROOK,
*Chairman Committee on Expenditures in the Post Office Department,
House of Representatives, Washington, D. C.*

MY DEAR MR. ASHBROOK: Referring to your communication of June 26, relative to the investigation of the complaint of the Lewis Publishing Co. against the Post Office Department, I have to inform you that I have designated James J. Britt, Esq., Third Assistant Postmaster General, to represent the department in such way as may be deemed necessary at the several sessions of your committee during the inquiry into this case.

Respectfully,

FRANK H. HITCHCOCK,
Postmaster General.

Mr. BRITT. Postmaster General Hitchcock asks me to state to the committee that he is ready to cooperate fully with it in a fair, complete, and impartial investigation of all the matters involved in this inquiry; that it appears from the bill of complaint on behalf of the Lewis Publishing Co., a copy of which he has read, that of the several matters and things complained of only one, namely, the official acts in relation to the application of the Woman's National Weekly for admission to the second-class mail privilege on a change of frequency of issue, was performed during his administration, of which matter full and satisfactory explanation will be made at such time as the committee may desire; that of the other matters and things of which complaint is made, they relate to the official acts and transactions of his predecessors in office, and that of these he can not have direct personal or official knowledge, but that he will be pleased to give all facts, documents, and other matters in relation to them afforded by the record files and correspondence of the Post Office Department.

In addition to this, I wish to state fully to the committee my relation to the investigation. I do not appear as an advocate or as an attorney, but merely as a representative of the department to assist in the presentation of the records, files, documents, and other matters desired by the committee, and to aid in a proper understanding of the several acts and transactions referred to occurring prior to the incumbency of the present Postmaster General and as to one of the matters referred to in one of the specifications of the complaint, relating to the transaction of the department in connection with the Woman's National Weekly for admission to the mails as second-class matter. the official acts in connection with which were discharged during the present administration, and of which I shall request to make a full statement of the facts under oath, and to present such papers, records, and documents as are believed to be necessary in support of the position taken in the official acts discharged.

The CHAIRMAN. If there is no objection, we will adjourn until to-morrow morning at 10 o'clock.

(Thereupon the committee adjourned until to-morrow, Friday, July 14, 1911, at 10 o'clock a. m.)

COMMITTEE ON EXPENDITURES IN THE
POST OFFICE DEPARTMENT,
HOUSE OF REPRESENTATIVES,
Friday, July 14, 1911.

The committee met at 10 o'clock a. m., Hon. Joshua W. Alexander (acting chairman) presiding.

The following members of the committee were present: Messrs. Alexander, McCoy, Austin, and Towner.

There were also present Mr. Edwin C. Madden, attorney in fact for the Lewis Publishing Co., and Mr. James J. Britt, Third Assistant Postmaster General.

**STATEMENT OF MR. EDWIN C. MADDEN, ATTORNEY IN FACT
FOR THE LEWIS PUBLISHING CO.—Continued.**

Mr. ALEXANDER. You may proceed, Mr. Madden.

Mr. MADDEN. Before proceeding in the regular order of my presentation I ask permission to make a correction of a statement made by me yesterday. On yesterday Mr. Austin asked me my opinion as to the transfer of the inspector system of the Post Office Department to the Department of Justice, and I said, broadly, that it would be a good thing. I did not stop to qualify that yesterday, and I would like to do it to-day to this extent: I believe that inasmuch as the inspectors are required to go about among the people for the purpose of securing evidence to be used in the administration of the criminal laws, they should be under the jurisdiction of the Department of Justice. I would not transfer the whole inspector force, however, to the Department of Justice. I would leave with the Postmaster General such portion of that force as is necessary for the public business within the postal service. I do not believe that the Postmaster General is constituted or qualified to conduct the campaign among the people that is going on at this time.

Mr. MCCOY. You do not mean a political campaign?

Mr. MADDEN. No, sir; I do not mean a political campaign. I mean the searching and raiding of establishments, the seizing of papers, and the securing of indictments, and all that sort of thing, that is going on all the time. You seldom pick up a paper that you do not read of a raid, a seizure of papers, or an arrest by post-office inspectors.

Mr. TOWNER. Is it not true, in reality, that the complaint is because either of the excessive zeal of the individuals in the service or of the officials who direct their action?

Mr. MADDEN. Yes, sir; to a great extent. I will explain that.

Mr. TOWNER. I want to ask you another question in that connection: Is it not true that nearly all of these cases have a civil and criminal significance at one and the same time? For instance, the fraud against the department might be in taking from it the postage to which it was entitled, and, in that connection, there would be a civil remedy for the Government and, at the same time, it might be a violation of the criminal laws of the country and would have to be dealt with by the Department of Justice. The report of the inspector upon the particular question would disclose to the department the civil part of the proceeding and would disclose, at the same time, the facts upon which a criminal prosecution could be based.

It, of course, would not be necessary that there should be two sets of inspectors for the purpose of determining these two things because that could be determined by one set of inspectors. Is not that true?

Mr. MADDEN. The complaint is general. If you were to call upon the public to file its complaints with regard to the post-office inspectors you would simply be flooded. I say this, that probably a great part of it is due to excessive zeal on the part of individuals, as was true in the case I cited in the record here. I do not believe that a post-office inspector is qualified to sit as a magistrate and give preliminary hearings. It is true that these cases have both a civil and criminal aspect very often, and so far as the inspector's report goes, the civil end of the matter could go to the Post Office Department, but I should say that the criminal side of the case should be handled by the Department of Justice. I would not permit post-office inspectors to raid establishments or make arrests or seize papers, nor has he the lawful authority to do so. It can not be found in the law anywhere that post-office inspectors have authority to do these things. I have searched them through very carefully, and I give it as my judgment that they have no authority to do it under the law.

Mr. MCCOY. Judge Towner's question related to the employment of two sets of inspectors to ascertain facts which might be the foundation for two kinds of liability, civil and criminal.

Mr. MADDEN. And I would say in that connection that where the civil liability ends it should be turned over to the Department of Justice, and I want to suggest in my explanation that the Postmaster General might be permitted to retain for his use such post-office inspectors for the legitimate purposes of the department as are necessary, and turn the others over to the Department of Justice, if it needs any more, which I doubt, to handle the criminal side of these cases. I suggest that, because in the Department of Justice they do not have so much excess authority and they are restrained by law.

Mr. TOWNER. It occurs to me that the post-office inspectors must be under the Post Office Department, and under no other department, or else they would not be post-office inspectors. If they were somewhere else, they would be something else. It occurs to me that the post-office inspectors must be under the control of the Post Office Department, and should make their reports primarily to the Post Office Department. Then, of course, if the report of the inspector presents a case involving violation of the criminal laws, that report or that part of his report could be referred to the Department of Justice. It seems to me that there is no necessity for transferring inspectors from the Post Office Department to the Department of Justice, because certainly if they are doing their duty in a wrong manner, either because of excessive zeal or because of anything else, that is an evil which should be amended or corrected in the administration of the department.

Mr. MADDEN. That is correct.

Mr. TOWNER. And as to transferring them to some other department, the same trouble or cause of complaint might exist as in this.

Mr. MADDEN. If you will read my corrected answer, you will see that I said that inasmuch as the department might have need for them, they might retain them. But I think that the Attorney

General should handle all of the criminal cases, and that the Postmaster General should keep his hands off of that part of it. As to the question of transferring the post-office inspectors, that would simply be a change of title; they would perform the same work.

Mr. TOWNER. But what you complain of is maladministration in the Post Office Department?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. And that could be cured by a correct, fair, and just administration of the Post Office Department?

Mr. MADDEN. Yes, sir; that is true.

Mr. TOWNER. Then, there would be no necessity for the transfer of these inspectors, because these same inspectors would be under another department?

Mr. MADDEN. One moment, if you please. I will say, if you care to investigate that, you will find that when these inspectors that were engaged upon this Lewis case were running riot in his establishment, without any authority of law at all, and devoting all their time, night and day, to it, sealing up the doors to the building, seizing their papers, and making this raid upon this establishment, at that very same time, for the lack of proper attention from the inspector force, within that very post office defalcations were going on, and I believe that Postmaster Wyman has a bill before Congress now to reimburse him for some losses that occurred in the post office at that very time.

Mr. McCoy. Where?

Mr. MADDEN. In the St. Louis post office.

Mr. TOWNER. I was not discussing any particular instance.

Mr. MADDEN. I was citing that as an instance to show that the time of the inspectors should not be employed in business outside of that of the Post Office.

Mr. McCoy. Your plan is that when an inspector of the Post Office Department has discovered certain facts which might lead to a criminal proceeding, the report should be turned over to the Attorney General's office, and that it should not be acted upon in the Post Office Department?

Mr. MADDEN. Yes, sir.

Mr. McCoy. So that your object would be not so much to transfer the inspectors, but to transfer the criminal part of the business, as indicated by the inspector's report?

Mr. BRITT. This discussion, it seems to me, pertains rather more to matters of public policy than to this inquiry, yet, so many reflections have been cast upon the post-office inspectors that I feel I should say just one word in respect to the real situation in relation to them. I have prosecuted lawsuits where the inspectors had prepared the case, and have defended them, also, where they have prepared the case, and my experience is that post-office inspectors are, as a rule, an honorable, respectable, and intelligent set of officials; that they are invaluable to the public service, and that they are most grossly misrepresented and shamefully abused. Now, in this case—and Mr. Madden will support what I am now going to say, because I shall speak from the record—these inspectors went to the publishing house of the Lewis Publishing Co. and stayed a long time on several different occasions.

At one time it was by special agents and clerks, at the instance of Mr. Lewis, and they stayed a long time. It is a matter of record

that Mr. Lewis repeatedly, both verbally and in writing, insisted that every book, record, file, and everything else in connection with his business was open for inspection. He invited that inspection, and stated that he would most fully and heartily cooperate with the officials in looking into anything. These are statements on the part of Mr. Lewis himself. The inspectors went, as I infer from the record and as I have been told by the inspectors personally, and their purpose was made known to the Lewis Publishing Co. These representatives of the department indicated what they wanted, and Mr. Lewis or his representatives and, as I recall, Mr. Lewis personally, told them that they had full and free access to the establishment and that they could ascertain these facts in their own way. Now, that I gather from the record. I want my statement to be perfectly correct, and if it is not correct I want Mr. Madden or the record to show what the facts are. The instances in which post-office inspectors have seized papers and conducted investigations in the manner which has been described here, in my judgment, are extremely rare, if they exist at all, and I know of my own personal knowledge that if such cases come to the notice of the Post Office Department the inspectors so offending are subject to severe reprimand or correction, or even more serious treatment.

I will give this instance, not that I think it ought to go into this record, but because it pertains very closely to the organization of the Post Office Department, and that, in a way, involves us all. An inspector was investigating a publisher, very like the case you are representing, Mr. Madden. The publisher was obstinate and unwilling to the investigation. It seemed germane to the inquiry, of which I have knowledge, that the inspector should get such information, more for the benefit of the publisher himself than for the Post Office Department. Now, in the meantime, the publisher came to Washington and called on me and asked me if I thought I ought to insist upon that information being given. I said I did not think it was necessary to the department, but that it was important for himself. After explaining the matter to him he said, "You are very liberal, and they shall certainly have the information." Now, in another case the post-office inspectors thought they had a right to demand certain information. They did not want to physically take it, so they wrote a note to their head and he referred that to me. This is what I said: "When you desire information of the head of a publishing house you should courteously indicate to him what you want and for what purpose you want it. If it is refused, you have no right to make a complaint right away, but if you believe it is essential to your case, write a courteous letter to the publisher, requesting the information, and telling him why you think you are entitled to it. If he still refuses, report the facts to the department." I have mentioned that because I know that my action in that instance is in consonance with the usual course in relation to the instructions sent to inspectors by the heads of divisions in the Post Office Department. Of course, the inspectors are human, and once in a while they may fail to observe the proper course, but it is more from ignorance than from willfulness. I think these instances are extremely rare. As for this suggestion of transferring the post-office inspectors to the Department of Justice, I will say this: Under the rule they are required to furnish the district attorney, in the

district where the investigation is made, a copy of their report involving the slightest suggestion of criminal violation. They transmit these reports to the district attorneys for their consideration, and, in that way, the Department of Justice has all the information they have. They do not undertake to tell the department what it shall do, and the Post Office Department does not undertake to control the criminal side of these findings, except it should be in rare instances where the flagrancy of the offense is so apparent that it involves the department itself. So far as I know no comment or suggestions are made, but the report is simply referred.

Mr. MCCOY. What about this sealing up of the doors of the Lewis Publishing Co. by the inspectors?

Mr. BRITT. If that is a fact, Mr. McCoy, I think it will be disclosed here that it was done upon the permission of the company, and that the inspectors had, as they stated, a valid reason for making the request, which will be explained here by the inspectors who will go upon the stand.

Mr. MCCOY. Will you have that point fully covered?

Mr. MADDEN. I have some affidavits here bearing on the matter.

Mr. MCCOY. I think that point should be fully covered. That may have been a suggestion on the part of Mr. Lewis, that they seal the doors of the building when they left.

Mr. MADDEN. If any person has suggested or consented to the sealing up of the doors, as described here in the affidavit, it is beyond my knowledge, and I have not been informed in that way.

Mr. TOWNER. Did you communicate with Mr. Lewis about his personal appearance here?

Mr. MADDEN. No, sir; and I was going to explain that. I went home pretty well used up last night, and it slipped my mind. I did not think it necessary to communicate with him, as you suggested that you would leave that to my judgment. I intended to ask you whether you insisted upon having that matter produced now, or wait until such time as the officers of the institution will be on the stand. It would be an expensive matter with them now.

Mr. TOWNER. So far as I am concerned, I want to say to you, as a member of this committee, that I would like to have this information, if you can produce it for us in some original or authoritative manner. I leave that entirely to you. The easiest, cheapest, and best way, of course, would be entirely satisfactory, but I do not see how we can possibly get along without it. As there are many things which depend upon the testimony of Mr. Lewis himself, I do not see how it is possible to get along without his personal appearance here.

Mr. MADDEN. He will come here if necessary, but my expectation is that when a full disclosure is made to this committee, it will feel that it is necessary, in order to handle the case conveniently, to have a subcommittee or the full committee to visit St. Louis and put people on the stand who can testify about all these matters. Then and there you could get all of the papers you want. That is my expectation, and it occurred to me that it would be unnecessary to call upon them now to produce these things here if you should determine to send a subcommittee out to St. Louis.

Mr. TOWNER. I do not think it will be necessary to send a subcommittee to St. Louis to see these papers.

Mr. ALEXANDER. Well, we might take testimony here, and then, if it should appear that there was a considerable amount of testimony to be taken there——

Mr. TOWNER (interposing). This is my idea about that: It occurs to me that we will not require the testimony of more than three or four witnesses there, and certainly it would be less expensive to pay the expenses of these witnesses here than to have this committee to go to St. Louis to sit.

Mr. ALEXANDER. A subcommittee of two or three could go there with very little expense.

Mr. TOWNER. That is an unsatisfactory method of proceeding, and I do not think we ought to undertake it. The indications are that the vacation between this session and the next regular session will be a very short one, and as all of us have personal matters to look after, it occurs to me that we ought to dispose of this matter if we possibly can here in Washington.

Mr. MADDEN. I thought, perhaps, that Judge Towner would be willing to waive that request until it was determined whether a subcommittee could go to St. Louis. I will be very glad to furnish it, if it should appear that you are not going there.

Now, Mr. Britt spoke of the question of public policy in having these inspectors to make these seizures, arrests, etc., that have been spoken of——

Mr. BRITT (interrupting). Pardon me, I did not speak of public policy in having arrests and seizures made.

Mr. MADDEN. I will answer that part of it by saying that public policy is determined by the law, and the law does not authorize them to do these things of which complaint is made. Now, another instance has been cited here, and if the committee desires me to secure definite information on that particular case I will endeavor to do so.

Mr. MCCOY. Does that affect this case?

Mr. MADDEN. It affects the question of the inspectors——

Mr. MCCOY (interposing). That is something we can inquire into later.

Mr. ALEXANDER. After this whole case is here, it may appear that the law should be changed in some respects, or that the inspectors are exercising too much authority or doing things that they ought not to do, or that they are violating the rights of the citizens and the statute authorizes it. In that event we ought to curtail that right or privilege, and we should be in a position to make recommendations to Congress for an amendment of the postal laws.

Mr. MCCOY. But let us try one case at a time.

Mr. MADDEN. I want to go on record at this time in respect to your remarks, with the statement that a great portion of this presentation—in fact, as much on that side as on Mr. Lewis's side—is for the purpose of securing, if we can, proper amendments to the law in order that repetitions of what has occurred in this case may be avoided.

Mr. MCCOY. My suggestion is that after you get through with this case, if you should want to make a general statement in regard to the postal laws, we could take that up as a separate matter.

- Mr. MADDEN. I will proceed with my statement. I was referring to the indictments, filed December 1, 1905.

These indictments misrepresented the law, were without probable cause, and fraudulent. It was a monstrous wrong inflicted upon innocent persons, who were doing no more in the use of the mails than hundreds of thousands of other persons were then and are now doing every day in the year, namely, exercising their lawful privileges. It was as groundless as it would be to indict the same persons for walking in the sunlight or breathing the open air. It was made possible by reason of the disregard of the "usual lines pursued by your bureau," namely, the Bureau of the Third Assistant Postmaster General, having by lawful regulation jurisdiction of such matters, and by reason of the Postmaster General's taking the case out of the hands of the properly constituted officer, which in turn made it possible to manipulate the laws and regulations in the furtherance of the objects and purposes of the conspiracy which I have charged existed.

The Hon Francis W. Cushman, Member of Congress, now deceased, was once the victim of a wrongful grand jury indictment. It was not brought to trial. It was dismissed. Cushman demanded a hearing in the court and, among other things, said:

Yes; after I have been causelessly arrested and detained for 23 days I am now dismissed with a blot upon my name and a stain upon my reputation. I can now go and rebuild what some one else has torn down. I can now commence to repair what has cost me the labor of my lifetime to build up and what some one else has wantonly destroyed in a single hour.

Hon. Frank O. Lowden, Member of Congress, speaking on the subject of grand jury indictments, April 2, 1910, among other things, said:

An indictment of an honest man, even though he be acquitted, is crueler punishment than the indictment and conviction of the perpetrator of a crime. * * * Every indictment and every prosecution which turns out to be unwarranted weakens immeasurably the authority of the courts. And any practice which diminishes the authority of the courts strikes at the fundamental security of our liberties.

EXHIBIT No. 14.

INDICTMENT.

UNITED STATES OF AMERICA,

Eastern Division of the Eastern Judicial District of Missouri, ss:

In the district court of the United States, within and for the division and district aforesaid, at the November term thereof, A. D. 1905.

The grand jurors of the United States, empaneled, sworn, and charged at the term aforesaid of the court aforesaid, on their oath present:

That heretofore, to wit, on the 1st day of August, 1905, at the division and district aforesaid, Edward G. Lewis, Frank J. Cabot, and William E. Miller, did unlawfully and feloniously conspire, combine, confederate, and agree together to defraud the United States out of large sums of money (the exact amounts of which are to the grand jurors aforesaid unknown) in the following manner, to wit:

That whereas the said Edward G. Lewis, Frank J. Cabot, and William E. Miller were then and there engaged (near a station known as Winner Station, in the county of St. Louis, in the State of Missouri, said station being a branch of the post office at St. Louis, Mo.), in printing, publishing, and mailing monthly, two certain printed publications named, known, and called, respectively, the *Woman's Farm Journal* and the *Woman's Magazine*, both of which had in pursuance of law been admitted to second-class mail privileges and were thereby entitled to be sent by the publishers thereof from the office of publication to actual subscribers thereto (including sample copies of same) and transmitted through the mails of the United States at 1 cent a

pound or fraction thereof, the postage thereon to be prepaid by the publishers of said printed publications.

And the grand jurors aforesaid, in their oaths aforesaid, do further present, that on the day and year aforesaid, at division and district aforesaid, the said Edward G. Lewis, Frank J. Cabot, and William E. Miller, conspired, confederated, combined, and agreed together to falsely and fraudulently represent that the number of the actual subscribers to said publications were largely in excess of the actual and bona fide number of subscribers to said publications and thereby fraudulently secure to be transmitted through the United States mails from said Winner Station a large number of said publications in excess of the number to which they were entitled, as aforesaid, at the rate of 1 cent per pound.

That in pursuance of said unlawful and felonious conspiracy, combination, confederation, and agreement and to effect the object thereof, the said Edward G. Lewis, Frank J. Cabot, and William E. Miller, afterwards, to wit, on the 1st day of October, 1905, at the division and district aforesaid, deposited and caused to be deposited in the United States mails, at said Winner Station, to be transmitted through the said United States mails, at the rate of 1 cent per pound, 300,727 copies of the said *Womans' Farm Journal* for October, 1905 (aggregating in weight 65,784 pounds) in excess of the number of copies and pounds which they were legally entitled to transmit through the mails at the rate of 1 cent per pound.

That in further pursuance of said unlawful and felonious conspiracy, combination, confederation, and agreement, and to effect the object thereof, the said Edward G. Lewis, Frank J. Cabot, and William E. Miller, afterwards, to wit, on the 20th day of October, 1905, at the division and district aforesaid, and at the station aforesaid, deposited and caused to be deposited in the United States mails for transmission through and by the same at the rate of 1 cent per pound, 539,308 copies of the *Woman's Magazine* for November, 1905, aggregating in weight 107,862 pounds in excess of the number of copies and pounds which they were legally entitled to transmit through the mails at the rate of 1 cent a pound, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

DAVID P. DYER,
United States Attorney.

(Indorsed.) No. 5222. United States district court, eastern division, eastern district of Missouri. The United States *v.* Edward G. Lewis, Frank J. Cabot, and William E. Miller. Indictment for violation of sec. 5440. A true bill. Alfred Clifford, foreman grand jury. Filed Dec., 1, 1905, James R. Gray, clerk.

DEMURRER TO INDICTMENT.

In the United States district court for the eastern division of the eastern judicial district of Missouri.

The United States against E. G. Lewis, Frank J. Cabot, William E. Miller.—Indictment No. 5222.

Now come the above-named defendants, and each of them, and demur to the said indictment upon the following grounds, to wit:

First. For that said indictment does not state facts sufficient to constitute a public offense committed by either or all of said defendants against the United States and thereupon said defendants pray the judgment of this court thereof.

C. D. O'BRIEN,
BARCLAY & FAUNTLEROY,
Attorneys for Defendants.

(Indorsed:) The United States *v.* E. G. Lewis et al., demurrer to indictment No. 5222. Filed May 13, 1907. W. W. Nall, clerk.

MEMORANDUM ON DEMURRER TO INDICTMENT.

The act of March 3, 1885 (23 Stat., 387; U. S. Comp. Stats. of 1901, p. 2669), provides: "That all publications of the second class, except as provided in section 25 of said act, when sent by the publishers thereof, and from the office of publication, including sample copies, or when sent from a news agency to actual subscribers thereto, or to other news agents, shall, on and after July 1, 1885, be entitled to transmission through the mails at 1 cent a pound or a fraction thereof, such postage to be prepaid as now provided by law."

The indictment charges that "the defendants engaged in printing, publishing, and mailing monthly two certain printed publications, named, known, and called, respectively, the *Woman's Farm Journal* and the *Woman's Magazine*, both of which had in

pursuance of law been admitted to second-class mail privileges, and were thereby entitled to be sent by the publishers thereof from the office of publication to actual subscribers thereto (including sample copies of same) and transmitted through the mails of the United States at 1 cent a pound or a fraction thereof, the postage thereon to be prepaid by the publishers of said printed publications."

The indictment then proceeds and charges that said defendants "conspired, confederated, combined, and agreed together to falsely and fraudulently represent that the number of the actual subscribers to said publications were largely in excess of the actual and bona fide number of subscribers to said publications, and thereby fraudulently secure to be transmitted through the United States mails from said station a large number of said publications in excess of the number to which they were entitled to, as aforesaid, at the rate of 1 cent per pound."

Then the overt act is charged as follows: "That in pursuance of said unlawful and felonious conspiracy, combination, confederation, and agreement, and to effect the object thereof, the said defendants deposited in the United States mails at said station to be transmitted through the said United States mails at the rate of 1 cent per pound, 300,727 copies of the said *Woman's Farm Journal* for October, 1905, in excess of the number of copies and pounds to which they were legally entitled to transmit through the mails at the rate of 1 cent per pound," and then also charges that these "defendants deposited 539,308 copies of the *Woman's Magazine* for November, 1905, in excess of the number of copies to which they were legally entitled to transmit through the mails at the rate of 1 cent per pound."

The indictment is under section 440 of the United States Revised Statutes, making it an offense for two or more persons to conspire to defraud the United States; the indictment charging that that was the object of the defendants.

It will be noticed that there is no limitation in the act of March 3, 1885, as to the number of copies of such publications which may be sent through the mails at second-class rates, nor does the act limit copies to subscribers solely, but grants the privilege to all "publications" of the second class, including sample copies.

Whether there is any authority of law authorizing the Postmaster General to limit the number of copies of the publication which may be sent through the mails at this low rate to bona fide subscribers, or whether he is authorized to determine the number of sample copies which may thus be mailed, has been ably argued by counsel, but the view taken by the court makes it unnecessary to determine that question, as the demurrer to the indictment must be sustained upon other grounds.

It is the settled rule of law that in criminal cases prosecuted under the laws of the United States the accused has the constitutional right to be informed of the nature and cause of the accusation. The indictment must set forth the offense with clearness, and with all necessary certainty to apprise the accused of the crime with which he stands charged, and every ingredient of which the offense is composed must be accurately and clearly alleged. It is an elementary principle of criminal pleading that where the definition of an offense, whether it be at common law or by statute, includes generic terms, it is not sufficient that the indictment shall charge the offense in the same generic terms as in the definition, but it must state the species, it must descend to particulars.

The object of the indictment is, first, to furnish the accused with such a description of the charge against him as will enable him to make his defense and avail himself of his conviction or acquittal for protection against a further prosecution for the same cause; and, second, to inform the court of the facts, so that it may decide whether these facts are sufficient in law to support a conviction if one should be had. And these facts are to be stated, not conclusions of law alone. A crime is made up of acts and intents, and these must be set forth in the indictment with reasonable particularity of time, place, and circumstances. (*United States v. Cruikshank*, 92 U. S., 542.)

The indictment is fatally defective in that respect, as it fails to charge the number of copies which defendants as publishers of these magazines were under the law authorized to transmit at the reduced rate of postage, nor does it allege the number which could be sent to subscribers and those which could be sent as sample copies. That they transmitted certain numbers of copies in excess of copies and pounds to which they were legally entitled to transmit through the mails at the rate of 1 cent per pound is a conclusion of law merely, not a statement of facts from which the court can determine whether this conclusion of law is right or wrong, nor does it furnish the defendants with such information as will enable them to make their defense. There is no allegation which enables the court to determine, or the defendants to know, how many copies the Government claims they could legally transmit through the mails, although the indictment shows that these publications were entitled to the second-class privilege; it fails to show how many, if any, bona fide subscribers each publication had; and how many sample copies could be sent by reason of their respective subscription

lists; it fails to allege anything which warrants the conclusion that legally the publishers could not transmit through the mails all the copies which they did send. There is nothing to indicate why these copies were in excess of the number of copies which they were legally entitled to transmit at the rate of 1 per cent per pound; there is merely a statement or declaration of the pleader that there were several hundred thousand copies in excess of the number they were legally entitled to transmit.

It is for the court to determine from the allegations in the indictment whether the conclusion of law reached by the pleader that the copies which defendants sent were in excess of those which they were by law authorized to send is correct. The privilege of transmitting these journals through the mails at second-class rates is admitted to have been granted. Whether these defendants have conspired to send a greater number than permitted by law for the purpose of defrauding the Government of the difference in the rates charged between the different classes of mail matter can not be determined from any of the facts set out in the indictment.

In declaring an act of Congress, creating a criminal offense, unconstitutional, as being too general, the Supreme Court used the following language: It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained and who should be set at large. (*U. S. v. Reese*, 92 U. S., 214.) There is no reason why this language should not apply to an indictment, and if applied to the indictment in this cause, the demurrer must be sustained.

TRIEBER, D. J.

(Indorsed:) No. 5222. The United States v. E. G. Lewis et al. Opinion of court on demurrer. Filed May 17, 1907. W. W. Nall, clerk.

UNITED STATES OF AMERICA,

Eastern Division of the Eastern Judicial District of Missouri, ss:

I, W. W. Wall, clerk of the district court of the United States in and for the eastern division of the eastern judicial district of Missouri, do hereby certify that the writing hereto attached is a true copy of the indictment, demurrer to indictment, and memorandum on demurrer to indictment in case No. 5222 of the United States, plaintiff, v. Edward G. Lewis, Frank J. Cabot, and William E. Miller, defendants, as fully as the same remains on file in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in the eastern division of said district, this 28th day of December, in the year of our Lord 1910.

[SEAL.]

W. W. WALL,
Clerk of said Court.

UNITED STATES OF AMERICA,

Eastern Division of the Eastern Judicial District of Missouri, ss:

In the district court of the United States, within and for the division and district aforesaid, at the November term thereof, A. D. 1905.

The grand jurors of the United States, empaneled, sworn, and charged at the term aforesaid, of the court aforesaid, on their oath present:

That heretofore, to wit, on the 1st day of August, 1905, at the division and district aforesaid, and within the jurisdiction of the court aforesaid, Edward G. Lewis, Frank J. Cabot, and William E. Miller did unlawfully and feloniously conspire, combine, confederate, and agree together to defraud the United States out of large sums of money (the exact amounts of which are to the grand jurors aforesaid unknown) in the manner following, to wit:

That whereas the said Edward G. Lewis, Frank J. Cabot, and William E. Miller were then and there, and for a long time prior thereto had been, at the division and district aforesaid, engaged in printing and publishing monthly, and circulating by means of the United States mails, a certain printed publication called *The Woman's Farm Journal*, which said publication had been and was then (upon due and proper application therefor) accorded by the Postmaster General of the United States, and in accordance with law and the regulations of the Post Office Department of the United States, the privilege of second-class mail matter, at St. Louis, Mo., and was thereby entitled to be sent by the publishers thereof through the United States mails from the office of publication at the rate of 1 cent per pound, or fraction thereof, to actual subscribers for said publication, and in addition thereto sample copies of like issue, at the same rate (when properly marked) equal in number and weight to the number and weight sent to said actual subscribers, the postage thereon to be prepaid by the publishers of said publication to the postmaster at the city of St. Louis, Mo.

And the grand jurors aforesaid, on their oath aforesaid, do further present that on the day and year aforesaid, at the division and district aforesaid, and within the jurisdiction of said court, the said Edward G. Lewis, Frank J. Cabot, and William E. Miller unlawfully and feloniously conspired, confederated, combined, and agreed together to falsely and fraudulently represent to the postmaster at St. Louis, Mo., and other officers and employees of the Post Office Department of the United States, at St. Louis, Mo., that the number of actual subscribers to said publication, the Woman's Farm Journal, were largely in excess of the true and actual number of subscribers to and for said publication, for the purpose and with the intent upon the part of the said Edward G. Lewis, Frank J. Cabot, and William E. Miller to obtain and secure transmission by and through the mails of the United States, from the post office at St. Louis, Mo., at the rate of 1 cent per pound or fraction thereof, a large number of said publications in excess of the number they were entitled to mail, as aforesaid (the legal rate of postage on said excess being 1 cent per copy, or 4 cents per pound, when sent to one address), and thereby to defraud the United States out of a large sum of money, to wit, the difference between the amount of postage at the rate of 1 cent per pound on said excess mailings of said publications and the amount of postage required by law to be paid thereon, to wit, 1 cent per copy, or 4 cents per pound, when sent to a single address.

That in pursuance of said unlawful and felonious conspiracy, confederation, and agreement, and to effect the object thereof, the said Edward G. Lewis, Frank J. Cabot, and William E. Miller, afterwards, to wit, on the 11th day of October, 1905, at the division and district aforesaid, and within the jurisdiction of the court (2) aforesaid, deposited and caused to be deposited in the post office of the United States at St. Louis, Mo., to be transmitted through the United States mails, at the rate of 1 cent per pound, 370,950 copies of the said Woman's Farm Journal for the month of October, 1905, aggregating in weight 68,890 pounds in excess of the number of copies they, the said Edward G. Lewis, Frank J. Cabot, and William E. Miller, were legally entitled to transmit through the mails at the rate of 1 cent per pound.

SECOND COUNT.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States, and the grand jurors aforesaid, on their oath aforesaid, do further present: That on the 1st day of August, 1905, at the division and district aforesaid, and within the jurisdiction of the court aforesaid, the said Edward G. Lewis, Frank J. Cabot, and William E. Miller, did unlawfully and feloniously conspire, combine, confederate, and agree together to defraud the United States out of large sums of money (the exact amounts of which are to the grand jurors aforesaid unknown) in the manner following, to wit:

That whereas the said Edward G. Lewis, Frank J. Cabot, and William E. Miller were then and there, and for a long time prior thereto had been, at the division and district aforesaid, engaged in printing and publishing monthly, and circulating by means of the United States mails, a certain printed publication called the Woman's Magazine, which said publication had been and was then (upon due and proper application therefor) accorded by the Postmaster General of the United States, and in accordance with the law and regulations of the Post Office Department of the United States, the privilege of second-class mail matter at St. Louis, Mo., and was thereby entitled to be sent by the publishers thereof through the United States mails, from the office of publication at the rate of 1 cent per pound, or fraction thereof, to actual subscribers for said publication, and in addition thereto, sample copies of like issue, at the same rate (when properly marked) equal in number and weight to the number and weight sent to said actual subscribers, the postage thereon to be prepaid by the publishers of said publication to the postmaster at the city of St. Louis, Mo.

And the grand jurors aforesaid, on their oath aforesaid, do further present: That on the day and year aforesaid, at the division and district aforesaid, and within the jurisdiction of the court aforesaid, the said Edward G. Lewis, Frank J. Cabot, and William E. Miller unlawfully and feloniously conspired, confederated, combined, and agreed together to falsely and fraudulently represent to the postmaster at St. Louis, Mo., and other officers and employees of the Post Office Department of the United States at St. Louis, Mo., that the number of actual subscribers to said publication, The Woman's Magazine, were largely in excess of the true and actual number of subscribers to and for said publication, for the purpose and with the intent, upon the part of the said Edward G. Lewis, Frank J. Cabot, and William E. Miller, to obtain and secure transmission by and through the mails of the United States from the post office at St. Louis, Mo., at the rate of 1 cent per pound or fraction thereof, a large number of said publications in excess of the number they were entitled to mail, as

aforesaid (the legal rate of postage on said excess being 1 cent per copy, or 4 cents per pound, when sent to one address), and thereby to defraud the United States out of a large sum of money, to wit, the difference between the amount of postage at the rate of 1 cent per pound on the said excess mailings of said publication and the amount of postage required by law to be paid thereon, to wit, 1 cent per copy, or 4 cents per pound, when sent to a single address.

That in pursuance of said unlawful and felonious conspiracy, confederation and agreement, and to effect the object thereof, the said Edward G. Lewis, Frank J. Cabot, and William E. Miller, afterwards, to wit, on the 20th day of October, 1905, at the division and district aforesaid, deposited and caused to be deposited in the post office of the United States at St. Louis, Mo., to be transmitted through the United States mails, at the rate of 1 cent per pound, 569,933 copies of the said *Woman's Magazine* for the month of November, 1905 (aggregating in weight 113,987 pounds), in excess of the number of copies they, the said Edward G. Lewis, Frank J. Cabot, and William E. Miller, were legally entitled to transmit through the mails at the rate of 1 cent per pound, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

DAVID P. DYER,
United States Attorney.

(Indorsed: No. 5258. United States District Court, Eastern Division, Eastern District of Missouri. The United States v. Edward G. Lewis, Frank J. Cabot, and William E. Miller. Indictment for violation of section 5440, R. S., U. S. A true bill, J. C. Howe, foreman grand jury. Filed May 4, 1906, James R. Gray, clerk.)

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, ss:

I, W. W. Nall, clerk of the district court of the United States, in and for the eastern division of the eastern judicial district of Missouri, do hereby certify that the writing hereto attached is a true copy of the indictment in case No. 5258 of The United States, plaintiff, v. Edward G. Lewis, Frank J. Cabot, and William E. Miller, defendants, as fully as the same remains on file in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in the eastern division of said district, this 28th day of December, in the year of our Lord 1910.

[SEAL.]

W. W. NALL,
Clerk of said court.

(Indorsed:) No. 5258. United States district court, eastern division of the eastern judicial district of Missouri. The United States, plaintiff, v. Edward G. Lewis, Frank J. Cabot, and William E. Miller, defendants. Duly certified copy of the indictment in the above-entitled cause.

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, ss:

In the district court of the United States, within and for the division and district aforesaid, at the May term thereof, A. D. 1907.

The grand jurors of the United States, impaneled, sworn, and charged at the term of the court aforesaid, on their oath, present:

That heretofore, to wit, on the 11th day of October, A. D. 1905, at the division and district aforesaid, and within the jurisdiction of the court aforesaid, Edward G. Lewis, Frank J. Cabot, and William E. Miller did unlawfully conspire, combine, confederate, and agree together to defraud the United States out of large sums of money in the manner following, to wit:

That whereas the said Edward G. Lewis, Frank J. Cabot, and William E. Miller were then and there, and for a long time prior thereto had been, at the division and district aforesaid, engaged in printing and publishing monthly, and circulating by means of the United States mails, a certain printed publication and periodical called "*The Woman's Farm Journal*," which said publication had been and was then accorded and granted by the Postmaster General of the United States, and in accordance with law and the regulations of the Post Office Department of the United States, the privilege of second-class mail matter at St. Louis, Mo., and said publication was thereby entitled to be sent by the publishers thereof through the United States mails from the office of publication at the rate of 1 cent per pound, or fraction

thereof, to actual subscribers to and for said publication; and in addition thereto sample copies of like issue at the same rate, when said sample copies were properly marked "Sample copy," equal in number and weight to the number sent to said actual subscribers, the postage thereon to be prepaid by the publishers of said publication to the postmaster at the city of St. Louis, Mo., as is provided for in paragraph 10, section 336, page 1011, of the United States Official Postal Guide of January, 1905, prescribed as of said date by the Postmaster General of the United States.

But if sample copies in excess of the number specified as aforesaid be presented for mailing they were chargeable with the transient second-class rate of 1 cent for each 4 ounces or fraction thereof, to be prepaid with stamps affixed on each separately addressed copy or package of unaddressed copies, as is provided in paragraph 12, section 330, page 1041 of the United States Official Postal Guide of January, 1905, prescribed as of said date by the Postmaster General of the United States.

And if the periodical published and mailed as aforesaid contained advertisement secured under an offer or agreement to distribute a given number of copies in excess of the number of subscribers the extra copies so issued were not regarded as sample copies, but as copies sent out in behalf of the advertisers or other parties interested, and were subject to postage at the rate of 1 cent for each 4 ounces or fraction thereof sent to a single address, as is provided in paragraph 5, section 456, pages 208-209 of the Postal Laws and Regulations, 1902, prescribed as of said date by the Postmaster General of the United States. And that the said Edward G. Lewis, Frank J. Cabot, and William E. Miller falsely and fraudulently represented to the postmaster at St. Louis, Mo., and other officers and employees of the Post Office Department of the United States at St. Louis, Mo., as follows, to wit:

First. That the number of sample copies properly marked "Sample copy" of said publication, the Woman's Farm Journal, for the month of October, A. D. 1905, which were lawfully mailable at the regular second-class rate of 1 cent per pound or fraction thereof, was 151,145 copies in excess of 141,328 copies, the true and actual number of said sample copies of said publication for said month which were lawfully mailable at said rate; for the purpose and with the fraudulent intent upon the part of the said Edward G. Lewis, Frank J. Cabot, and William E. Miller, to obtain and secure thereby transmission by and through the mails of the United States from the post office at St. Louis, Mo., at the regular second-class rate of postage of 1 cent per pound or fraction thereof, on said 151,145 excess copies as aforesaid, when as they, the said Edward G. Lewis, Frank J. Cabot, and William E. Miller then and there well knew the lawful postage rate thereon, as provided in said paragraph 12 of section 336, p. 1011 of the Official Postal Guide of January, 1905, was, on said excess mailings, 1 cent for each 4 ounces or fraction thereof, to be prepaid with stamps affixed on each separately addressed copy or package of unaddressed copies, and thereby to defraud the United States out of a large sum of money to wit, the difference between the amount of postage at the rate of 1 cent per pound on said excess mailing of said publication, and the amount of postage required to be paid and due thereon by law and the aforesaid paragraph 12 of the aforesaid regulation, to wit, 1 cent for each 4 ounces or fraction thereof, as therein provided.

Secondly. That the number of copies for actual and bona fide subscribers to said publication, the Woman's Farm Journal, for the month of October, A. D. 1905, that were lawfully mailable at the regular second-class postage of 1 cent per pound, or fraction thereof, was 215,559 copies in excess of 141,328 copies, the true and actual number of copies so mailable of said publication for said month at said regular second-class postage rate of 1 cent per pound, or fraction thereof, when in each and every copy of said publication for said month there was contained an advertisement secured under an offer and agreement to distribute a given number of copies in excess of the number of actual subscribers to said publication, and in each and every copy of said publication it was fraudulently set forth and averred, as the said Edward G. Lewis, Frank J. Cabot, and William E. Miller then and there well knew that the circulation of said publication, the Woman's Farm Journal, exceeded 600,000 copies each issue, for the purpose and with the fraudulent intent upon the part of the said Edward G. Lewis, Frank J. Cabot, and William E. Miller to obtain and secure thereby transmission by and through the mails of the United States from the post office at St. Louis, Mo., at the regular second-class rate of postage of 1 cent per pound, or fraction thereof, on said 215,559 excess copies, as aforesaid, when, as they, the said Edward G. Lewis, Frank J. Cabot, and William E. Miller then and there well knew the lawful rate of postage on said excess mailing, as provided in said paragraph 10 of section 336, page 1041, of the Official Postal Guide, January, 1905, and paragraph 5 of section 456, pages 208-209, of the Postal Laws and Regulations, 1902, was, and is, on said excess mailing, 1 cent for each 4 ounces, or fraction thereof, as therein provided, and thereby to defraud the United States out of a large sum of money, to wit, the difference between

the amount of postage at the rate of 1 cent per pound on said excess mailing of said publication and the amount of postage required to be paid and due thereon by law and the aforesaid paragraphs 10 and 5 of the aforesaid respective regulations, to wit, 1 cent for each 4 ounces, or fraction thereof, as therein provided.

That in pursuance of said unlawful conspiracy, confederation, and agreement, and to effect the object thereof, the said Edward G. Lewis, Frank J. Cabot, and William E. Miller, to wit, on the 11th day of October, A. D. 1905, at the division and district aforesaid, and within the jurisdiction of the court aforesaid, unlawfully deposited and caused to be deposited in the post office of the United States at St. Louis, Mo., to be transmitted through the United States mails at the rate of 1 cent per pound, 151,145 sample copies, marked "Sample copy," of said publication, the Woman's Farm Journal, for the month of October, A. D. 1905, in excess of the number of sample copies so marked it was lawful to mail, as above set forth at said postage rate; and 215,595 copies of said publication, the Woman's Farm Journal, for the month of October, 1905, in excess of the number it was lawful to mail to actual and bona fide subscribers, as above set forth, at said postage rate, thereby making the total number of said copies of said publication for said month unlawfully deposited and caused to be deposited, as aforesaid, 366,740 copies, aggregating in weight 73,348 pounds in excess of the number of copies and weight, respectively, of said publication for said month that it was lawful, as aforesaid, for said Edward G. Lewis, Frank J. Cabot, and William E. Miller to deposit and cause to be deposited for transmission through the mails at the regular second-class postage rate of 1 cent per pound; and thereby the United States was, as aforesaid, defrauded out of lawful postage on said total excess mailings in the sum of \$2,933.92; and the United States was thereby also defrauded into accepting said excess mailing for transmission through the United States mail at a less postage rate than the lawful postage rate thereon, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

SECOND COUNT.

And the grand jurors of the United States empaneled, sworn, and charged, as aforesaid, on their oath, do further present:

That heretofore, to wit, on the 31st day of October, A. D. 1905, at the division and district aforesaid, and within the jurisdiction of the court aforesaid, Edward G. Lewis, Frank J. Cabot, and William E. Miller, did unlawfully conspire, combine, confederate, and agree together to defraud the United States out of large sums of money in the manner following, to wit:

That whereas the said Edward G. Lewis, Frank J. Cabot, and William E. Miller were then and there, and for a long time prior thereto had been, at the division and district aforesaid, engaged in printing and publishing monthly and circulating by means of the United States mails a certain printed publication and periodical called The Woman's Magazine, for which said publication for entry to the mails of the United States as second-class matter at the second-class rate of postage had been made and a temporary permit granted, pending the consideration of a decision upon said application by the Post Office Department, authorizing said publication to be mailed at said second-class rate of postage at the United States post office at the city of St. Louis, Mo., and in accordance therewith said publication was entitled to be sent by the publishers thereof through the United States mails from the office of publication at the rate of 1 cent per pound, or fraction thereof, to actual subscribers to and for said publication; and, in addition thereto, sample copies of like issue at the same rate when said sample copies were properly marked "Sample copy," equal in number and weight to the number sent to said actual subscribers, the postage thereon to be prepaid by the publishers of said publication to the postmaster at the city of St. Louis, Mo., as is provided for in paragraph 10, section 336, page 1041 of the United States Official Postal Guide of January, 1905, prescribed as of said date by the Postmaster General of the United States; but if sample copies in excess of the number specified as aforesaid be presented for mailing, they were chargeable with the transient second-class rate of 1 cent for each 4 ounces or fraction thereof, to be prepaid with stamps affixed on each separately addressed copy, or package of unaddressed copies, as is provided in paragraph 12, section 330, page 1041, of the United States Official Postal Guide of January, 1905, prescribed as of said date by the Postmaster General of the United States. And if the periodical published and mailed, as aforesaid, contained advertisement secured under an offer or agreement to distribute a given number of copies in excess of the number of subscribers, the extra copies so issued were not regarded as sample copies, but as copies sent out in behalf of the advertisers or other parties interested and were subject to postage at the rate of 1 cent for each 4 ounces or fraction thereof sent to a single address, as is provided in

paragraph 5, section 456, pages 208-209 of the Postal Laws and Regulations, 1902, prescribed as of said date by the Postmaster General of the United States.

And that the said Edward G. Lewis, Frank J. Cabot, and William E. Miller falsely and fraudulently represented to the postmaster at St. Louis, Mo., and other officers and employees of the Post Office Department of the United States at St. Louis, Mo., as follows, to wit:

First. That the number of sample copies properly marked "Sample copy" of said publication, the Woman's Magazine, for the month of November, A. D. 1905, which were lawfully mailable, at the regular second-class rate of 1 cent per pound or fraction thereof, was 40,190 copies in excess of 539,901 copies, the true and actual number of said sample copies of said publication for said month which were lawfully mailable at said rate; for the purpose and with the fraudulent intent upon the part of the said Edward G. Lewis, Frank J. Cabot, and William E. Miller to obtain and secure thereby transmission by and through the mails of the United States from the post office at St. Louis, Mo., at the regular second-class rate of postage of 1 cent per pound or fraction thereof, on said 40,190 excess copies as aforesaid, when, as they, the said Edward G. Lewis, Frank J. Cabot, and William E. Miller, then and there well knew the lawful postage rate thereon, as provided in said paragraph 12 of section 336, page 1041, of the Official Postal Guide of January, 1905, was on said excess mailing, 1 cent for each 4 ounces or fraction thereof, to be prepaid with stamps affixed on each separately addressed copy or package of unaddressed copies, and thereby to defraud the United States out of a large sum of money, to wit, the difference between the amount of postage at the rate of 1 cent per pound on said excess mailing of said publication and the amount of postage required to be paid and due thereon by law, and the aforesaid paragraph 12 of the aforesaid regulation, to wit, 1 cent for each 4 ounces or fraction thereof, as therein provided.

Secondly. That the number of copies for actual and bona fide subscribers to said publication, The Woman's Magazine, for the month of November, A. D. 1905, that were lawfully mailable at the regular second-class rate of postage of 1 cent per pound or fraction thereof was 519,495 copies in excess of 539,901 copies, the true and actual number of copies so mailable of said publication for said month at said regular second-class postage rate of 1 cent per pound or fraction thereof, when in each and every copy of said publication for said month there was contained an advertisement secured under an offer and agreement to distribute a given number of copies in excess of the number of actual subscribers to said publication and in each and every copy of said publication it was fraudulently set forth and averred, as the said Edward G. Lewis, Frank J. Cabot, and William E. Miller then and there well knew, that the circulation of said publication, The Woman's Magazine, exceeded 1,500,000 copies each issue, for the purpose and with the fraudulent intent upon the part of said Edward G. Lewis, Frank J. Cabot, and William E. Miller to obtain and secure thereby transmission by and through the mails of the United States from the post office at St. Louis, Mo., at the regular second-class rate of postage of 1 cent per pound, or fraction thereof, on said 519,495 excess copies, as aforesaid, when, as they, the said Edward G. Lewis, Frank J. Cabot, and William E. Miller, then and there well knew, the lawful rate of postage on said excess mailing, as provided in said paragraph 10 of section 336, page 1041, of the Official Postal Guide, January, 1905, and paragraph 5 of section 456, pages 208-209, of the Postal Laws and Regulations, 1902, was, and is, on said excess mailing 1 cent for each 4 ounces or fraction thereof, as therein provided, and thereby to defraud the United States out of a large sum of money, to wit, the difference between the amount of postage at the rate of 1 cent per pound on said excess mailing of said publication and the amount of postage required to be paid and due thereon by law and the aforesaid paragraphs 10 and 5 of the aforesaid respective regulations, to wit, 1 cent for each 4 ounces or fraction thereof, as therein provided.

That in pursuance of said unlawful conspiracy, confederation, and agreement, and to effect the object thereof, the said Edward G. Lewis, Frank J. Cabot, and William E. Miller, to wit, on the 31st day of October, A. D. 1905, at the division and district aforesaid and within the jurisdiction of the court aforesaid unlawfully deposited and caused to be deposited in the post office of the United States at St. Louis Mo., to be transmitted through the United States mails at the rate of 1 cent per pound, 40,190 sample copies, marked "sample copies" of said publication, the Woman's Magazine, for the month of November, A. D. 1905, in excess of the number of sample copies so marked it was lawful to mail, as above set forth, at said postage rate; and 519,495 copies of said publication, the Woman's Magazine, for the month of November, 1905, in excess of the number it was lawful to mail to actual and bona fide subscribers, as above set forth, at said postage rate, thereby making the total number of said copies of said publication for said month unlawfully deposited and caused to be deposited as afore-

said 559,685 copies, aggregating in weight 111,937 pounds in excess of the number of copies and weight, respectively, of said publication for said month that it was lawful, as aforesaid, for said Edward G. Lewis, Frank J. Cabot, and William E. Miller to deposit and cause to be deposited for transmission through the mails at the regular second-class postage rate of 1 cent per pound; and thereby the United States was thereby, as aforesaid, defrauded out of lawful postage on said total excess mailings in the sum of \$4,477.48; and the United States was thereby also defrauded into accepting said excess mailing for transmission through the United States mail at a less postage rate than the lawful rate thereon, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

HENRY W. BLODGETT,
United States District Attorney.

(Indorsed: No. 5316. United States district court, eastern division, eastern district of Missouri. United States v. Edward G. Lewis, Frank J. Cabot, and William E. Miller. Indictment for violation of section 5440. A true bill, S. P. Emmons, foreman grand jury. Filed July 6, 1907, W. W. Nall, clerk.)

UNITED STATES OF AMERICA,

Eastern Division of the Eastern Judicial District of Missouri, ss:

I, W. W. Nall, clerk of the district court of the United States in and for the eastern division of the eastern judicial district of Missouri, do hereby certify that the writing hereto attached is a true copy of the indictment in case No. 5316, of The United States, plaintiff, v. Edward G. Lewis, Frank J. Cabot, and William E. Miller, defendants, as fully as the same remains on file in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court at office in the city of St. Louis, in the eastern division of said district, this 28th day of December, in the year of our Lord, 1910.

[SEAL.]

W. W. NALL,
Clerk of said Court.

(Indorsed:) No. 5316. United States district court, eastern division of the eastern judicial district of Missouri. The United States, plaintiff, against Edward G. Lewis, Frank J. Cabot, and William E. Miller, defendants. Duly certified copy of the indictment in the above entitled cause.

EXHIBIT No. 15.

UNITED STATES OF AMERICA,

Eastern Division of the Eastern Judicial District of Missouri, ss:

In the district court of the United States in and for the eastern division of said judicial district.

Be it remembered that at a regular stated term of the district court of the United States in and for said eastern division of the eastern judicial district of Missouri, begun and holden at the city of St. Louis, on the first Monday, the 4th day of May, in the year of our Lord 1908, the following, among other proceedings, were had and appear of record on Thursday, the 14th day of May, A. D. 1908, to wit:

The United States, plaintiff, v. Edward G. Lewis, defendant. Indictment for violation of section 5480, Revised Statutes, United States. 5315.

This day comes the United States, by Henry W. Blodgett, Esq., district attorney, and Chester H. Krum, Esq., special assistant district attorney, and the said defendant, Edward G. Lewis, being present in court in compliance with the recognizance heretofore entered into by him in this cause, and also appearing by Barclay & Fautleroy and C. D. O'Brien, his attorneys, and the jury heretofore sworn in this cause being present in court in custody of sworn bailiffs of this court, and the court having considered the motion of the defendant to instruct the jury to return a verdict of not guilty in this cause, argued and submitted on May 13, 1908, and being fully advised of and concerning the same, doth order that the said motion be, and the same is hereby, sustained; and thereupon the jury return into court the following verdict, to wit:

"We, the jury in the above-entitled cause, by direction of the court, find the defendant not guilty as charged in the indictment. W. C. Johnston, foreman."

And thereupon the court ordered the defendant discharged and that the panel of jurors sworn in this cause be, and they are hereby, now discharged as such petit jurors during the May term, 1908, of this court.

UNITED STATES OF AMERICA,

Eastern Division of the Eastern Judicial District of Missouri, ss:

I, W. W. Nall, clerk of the district court of the United States, in and for the eastern division of the eastern judicial district of Missouri, do hereby certify that the writing hereto attached is a true copy of the order of court under date of May 14, 1908, in case No. 5315 of the United States, plaintiff, v. Edward G. Lewis, defendant, as fully as the same remain on file and of record in said case on my office.

In witness whereof, I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in eastern division of said district, this 28th day of December, in the year of our Lord, 1910.

[SEAL.]

W. W. NALL, *Clerk of said Court.*

(Indorsed:) No. 5315. United States district court, eastern division of the eastern judicial district of Missouri. The United States, plaintiff, v. Edward G. Lewis, defendant. Duly certified copy of the order of the court under date of May 14, A. D. 1908, in the above-entitled cause.

UNITED STATES OF AMERICA,

Eastern Division of the Eastern Judicial District of Missouri, ss:

In the District Court of the United States, in and for the eastern division of said judicial district.

Be it remembered, That at a regular stated term of the district court of the United States, in and for said eastern division of the eastern judicial district, begun and holden at the city of St. Louis, on the first Monday, the 6th day of May in the year of our Lord, 1907, the following, among other proceedings, were had, and appear of record of Friday, the 17th day of May, A. D. 1907, to wit:

The United States, plaintiff, v. Edward G. Lewis, Frank J. Cabot, and William E. Miller, defendants. Indictment for violation of section 5440 of the Revised Statutes of the United States. 5222.

This day come the parties herein by their respective attorneys and the demurrer to the indictment in this cause heretofore submitted to the court having been duly considered by the court, it is ordered that the said demurrer to the indictment herein be, and the same is hereby, sustained.

And thereupon it is further ordered that the said defendants, Edward G. Lewis, Frank J. Cabot, and William E. Miller be and appear at and before this court at the next session of the grand jury of the United States of America, in and for the Eastern Division of the Eastern Judicial District of Missouri, to await the further action of the grand jury on the charges contained in the indictment herein, and that until then the said defendants remain on their present recognizances.

The United States, plaintiff, v. Edward G. Lewis, Frank J. Cabot, and William E. Miller, defendants. Indictment for violation of section 5440 of the Revised Statutes of the United States. 5258.

This day come the parties herein, by their respective attorneys, and the demurrer to the indictment in this cause heretofore submitted to the court having been duly considered by the court, it is ordered that the said demurrer to the indictment herein be, and the same is hereby, sustained.

And thereupon it is further ordered that the said defendants, Edward G. Lewis, Frank J. Cabot, and William E. Miller, be and appear at and before this court at the next session of the grand jury of the United States of America in and for the Eastern Division of the Eastern Judicial District of Missouri, to await the further action of the grand jury to the charges contained in the indictment herein, and that until then the said defendants remain on their recognizances entered in case numbered 5222 of this court.

UNITED STATES OF AMERICA,

Eastern Division of the Eastern Judicial District of Missouri, ss:

I, W. W. Nall, clerk of the district court of the United States in and for the eastern division of the eastern judicial district of Missouri, do hereby certify that the writing hereto attached is a true copy of the orders of court under date of May 17, A. D. 1907. In cases Nos. 5222, 5258 of the United States, plaintiff, v. Edward G. Lewis, Frank J. Cabot, and William E. Miller and Edward G. Lewis, Frank J. Cabot, and William E. Miller (respectively), defendants, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in the eastern division of said district, this 28th day of December in the year of our Lord 1910.

[SEAL.]

W. W. NALL,
Clerk of said Court.

(Nos. 5222, 5258. United States district court, eastern division of the eastern judicial district of Missouri. The United States, plaintiff, against Edward G. Lewis, Frank J. Cabot, and William E. Miller; and Edward G. Lewis, Frank J. Cabot, and William E. Miller (respectively), defendants. Duly certified copy of the orders of court under date of May 17, A. D. 1907, in the above-entitled cause.)

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, ss:

In the district court of the United States, in and for the eastern division of said judicial district.

Be it remembered that at a regular stated term of the district court of the United States, in and for said eastern division of the eastern judicial district of Missouri, begun and holden at the city of St. Louis, on the first Monday, the 3d day of May, in the year of our Lord 1909, the following among other proceedings were had and appear of record on Saturday the 23d day of October, A. D. 1909, to wit:

The United States, plaintiff, *v.* Edward G. Lewis and Francis V. Putnam, defendants. Indictments for violation of section 5480, Revised Statutes of the United States. 5313.

This day comes the United States, by district attorney, and also come the said defendants, by Shepard Barclay, Esq., their attorney, and with the leave of court the defendants withdraw the motion to transfer this cause to the United States Circuit Court heretofore filed herein.

And thereupon the district attorney says that he will not further prosecute the said defendants upon the indictment herein against them, and asks that the said indictment be now dismissed.

It is therefore now considered by the court that the indictment in this cause be, and the same is hereby, now dismissed and that the said defendants, Edward G. Lewis and Francis V. Putnam, be released and discharged from further prosecution upon the said indictment and that they go hence without day.

The United States, plaintiff, *v.* Edward G. Lewis and Francis V. Putnam, defendants. Indictments for violation of section 5480, Revised Statutes of the United States. 5314.

This day comes the United States by district attorney and also come the said defendants by Shepard Barclay, Esq., their attorney, and with the leave of court the defendants withdraw the motion to transfer this cause to the United States Circuit Court, heretofore filed herein.

And thereupon the district attorney says that he will not further prosecute the said defendants upon the indictment herein against them and asks that the said indictment be now dismissed.

It is therefore now considered by the court that the indictment in this cause be, and the same is hereby, now dismissed, and that the said defendants, Edward G. Lewis and Francis V. Putnam, be released and discharged from further prosecution upon the said indictment, and that they go hence without day.

The United States, plaintiff, *v.* Edward G. Lewis, Frank J. Cabot, and William E. Miller, defendants. Indictment for violation of section 5440, Revised Statutes of the United States. 5316.

This day comes the United States by district attorney and also come the said defendants by Shepard Barclay, Esq., their attorney, and with the leave of court withdraw the motion to transfer this cause to the United States Circuit Court, heretofore filed herein.

And thereupon the district attorney says that he will not prosecute the said defendants upon the indictment herein against them, and asks that the said indictment be now dismissed.

It is therefore now considered by the court that the indictment in this cause be, and the same is hereby, now dismissed, and that the said defendants, Edward G. Lewis, Frank J. Cabot, and William E. Miller, be released and discharged from further prosecution upon the said indictment, and that they go hence without day.

The United States, plaintiff *v.* Edward G. Lewis, defendant. Indictment for violation of section 5480, Revised Statutes of the United States. 5317.

This day comes the United States by district attorney, and also comes the said defendant by Shepard Barclay, Esq., his attorney, and with the leave of court withdraws the motion to transfer this cause to the United States Circuit Court heretofore filed herein. And thereupon the district attorney says that he will not further prosecute the said defendant upon the indictment herein against him and asks that the said indictment be now dismissed.

It is therefore now considered by the court that the indictment in this cause be, and the same is hereby, now dismissed, and that the said defendant, Edward G. Lewis, be released and discharged from further prosecution upon the said indictment and that he go hence without day.

The United States, plaintiff *v.* Edward G. Lewis, defendant. Indictment for violation of section 5480, Revised Statutes of the United States. 5318.

This day comes the United States by district attorney, and also comes the said defendant, by Shepard Barclay, Esq., his attorney, and with the leave of court withdraws the motion to transfer this cause to the United States Circuit Court heretofore filed herein. And thereupon the district attorney says that he will not further prosecute the said defendant upon the indictment herein against him and asks that the said indictment be now dismissed.

It is therefore now considered by the court that the indictment in this cause be, and the same is hereby, now dismissed, and that the said defendant, Edward G. Lewis, be released and discharged from further prosecution upon the said indictment, and that he go hence without day.

The United States, plaintiff, *v.* Edward G. Lewis, defendant. Indictment for violation of section 5480, Revised Statutes of the United States. 5319.

This day comes the United States by District Attorney, and also comes the said defendant by Shepard Barclay, Esq., his attorney, and with the leave of court withdraws the motion to transfer this cause to the United States circuit court heretofore filed herein.

And thereupon the district attorney says that he will not further prosecute the said defendant upon the indictment herein against him and asks that the said indictment be now dismissed.

It is, therefore, now considered by the court that the indictment in this cause be, and the same is hereby, now dismissed and that the said defendant, Edward G. Lewis, be released and discharged from further prosecution upon the said indictment, and that he go hence without day.

UNITED STATES OF AMERICA,

Eastern Division of the Eastern Judicial District of Missouri, ss:

I, W. W. Nall, clerk of the district court of the United States, in and for the eastern division of the eastern judicial district of Missouri, do hereby certify that the writing hereto attached is a true copy of the orders of court under date of October 23, A. D. 1909. In cases Nos. 5313, 5314, 5316, 5317, 5318, and 5319, of the United States, plaintiff, *v.* Edward G. Lewis and Francis V. Putnam; Edward G. Lewis and Francis V. Putnam; Edward G. Lewis, Frank J. Cabot, and William E. Miller; Edward G. Lewis; Edward G. Lewis; and Edward G. Lewis (respectively), defendants, as fully as the same remain on file and of record in said case in my office.

In witness whereof, I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in the eastern division of said district, this 28th day of December, in the year of our Lord 1910.

[SEAL.]

W. W. NALL, *Clerk of said Court.*

(Indorsed:) Nos. 5313, 5314, 5316, 5317, 5318, 5319. United States district court, eastern division of the eastern judicial district of Missouri. The United States, plaintiff, against Edward G. Lewis and Francis V. Putnam; Edward G. Lewis and Francis V. Putnam; Edward G. Lewis, Frank J. Cabot, and William E. Miller; Edward G. Lewis; Edward G. Lewis; and Edward G. Lewis (respectively), defendants. Duly certified copy of the orders of court under date of October 23, A. D. 1909, in the above-entitled cause.

These indictments and all others then standing were dismissed by the Government in October, 1909. A certified copy of each of these three indictments is submitted as one, marked "Exhibit No. 14."

Certified copies of the court records of dismissal of all the indictments, those for conspiracy to defraud the Government of postage and those for having devised a scheme to defraud through the use of the mails, are submitted as one, marked "Exhibit No. 15."

Inspector Fulton's "personal" letter of March 15 to the chief post-office inspector had been transferred to the Third Assistant. The design was to have the Third Assistant, the "proper officer of the department" advise the St. Louis postmaster that the rate of postage on the 300,727 copies was 1 cent for each 4 ounces or fraction, because the postal laws had been found "silent on that direct proposition." The Third Assistant did not do as he was wanted. He responded March 22 to the chief post-office inspector himself, and called attention to the irregularities in the case, and made it clear that it was not being handled "along the usual lines pursued by your [his] bureau." This declination of the "proper officer" to act as if the matter were being handled "along the usual lines" brought the Postmaster General into action to compel the Third Assistant to act. The Postmaster General now spoke for the first time in five months.

On March 22, 1906, the same day as the Third Assistant replied to the chief post-office inspector, practically declining to address the local postmaster, the Postmaster General broke his silence. A compared copy of his letter of March 22 is herewith submitted, marked "Exhibit 16."

EXHIBIT No. 16.

MARCH 22, 1906.

MEMORANDUM FOR THE THIRD ASSISTANT POSTMASTER GENERAL.

The letter addressed to you by the postmaster at St. Louis, Mo., under date of March 15, to which was attached your communication to me of March 17, is herewith returned.

You will please inform the postmaster at St. Louis, in response to his inquiry, of the amount of postage which should be collected on copies of the *Woman's Magazine* and the *Woman's Farm Journal*, now withheld from transmission by him as being in excess of the number of copies which the publishers are legally entitled to transmit at the second-class rate of postage; assuming as the basis of your instruction to the postmaster that the number of copies of each publication charged by him as having been mailed in excess of that authorized by law is correct.

It is requested that your letter of instructions to the postmaster at St. Louis be submitted to me before transmission.

GEO. B. CORTELYOU,
Postmaster General.

Mr. AUSTIN. I would like to hear it read.

Mr. MADDEN. I will read it.

Mr. AUSTIN. And also the promised letter of the postmaster at St. Louis reporting on this matter.

Mr. MADDEN. I have it here.

I want to call attention to the fact that this inspector's letter was dated the same day as the letter of the postmaster at St. Louis. I have explained that postmasters address the Assistant Postmasters General directly, while the inspectors address the chief post office inspector, who is attached to the Postmaster General's office.

Mr. AUSTIN. How do you account for both of the letters bearing the same date, when they were 800 miles apart?

Mr. MADDEN. They were both written from the same place, and there is evidence that both were written by the same person.

The following is from that letter:

The letter addressed to you by the postmaster at St. Louis, Mo., under date of March 15, to which was attached your communication to me of March 17, is herewith returned.

You will please inform the postmaster at St. Louis, in response to his inquiry, of the amount of postage which should be collected on copies of the *Woman's Magazine* and the *Woman's Farm Journal*, now withheld from transmission by him as being in excess of the number of copies which the publishers are legally entitled to transmit at the second-class rate of postage, assuming as the basis of your instruction to the postmaster that the number of copies of each publication charged by him as having been mailed in excess of that authorized by law is correct.

It is requested that your letter of instructions to the postmaster at St. Louis be submitted to me before transmission.

Mr. ALEXANDER. As I understand it, that letter was addressed to you by the Postmaster General?

Mr. MADDEN. Yes, sir; it broke the Postmaster General's five months of silence. From the time that the October 14 letter was sent the Postmaster General, when he violated his agreement of July 12 to put the case back in its regular order with the Third Assistant Postmaster General—when he surreptitiously violated it and had reports made to him on the side, as shown by the letter of November the 6th—the Third Assistant Postmaster General washed his hands of the case and refused to address any person on the subject whatever. He transmitted everything, including a large number of letters, as the record will show, to the Postmaster General during that course of five months, to no one of which he made reply until it became important to have this information in St. Louis. Now, after these five months, when the copies were being held up to determine the rate of postage on that 300,000 copies, for the first time in my experience as Third Assistant Postmaster General—and I do not know whether Mr. Britt will bear me out as to his experience—the Postmaster General asked to see a letter going out over the signature of the Third Assistant Postmaster General.

Mr. AUSTIN. You say you washed your hands of this case; did the Postmaster General simply take it out of your hands?

Mr. MADDEN. Whether he did or not, he did not say anything about it. I declined to have anything to do with it, and I would do nothing until he issued the instructions.

Mr. BRITT. That may be of service to me; you say you declined to have anything to do with the case?

Mr. MADDEN. Permit me to modify that. I declined to issue instructions, or to have anything to do with the case without definite instructions.

Mr. BRITT. You say that you washed your hands of the case. I ask you whether, under the duty enjoined upon you by law, you were at liberty at your will to discontinue to conduct that case, to prosecute, or to refuse to prosecute, as your own judgment might dictate?

Mr. MADDEN. Under ordinary circumstances, I should say I was in duty bound to go on with the matter in the ordinary course. But this was an extraordinary case, where the evidence showed—and it will be in the record—that the Postmaster General was acting in a double manner, as shown by his own letters here, and I could not tell what to do. My letters show that I repeatedly stated that I did not want to interfere or confuse the case, and I was entirely without definite instructions.

Mr. TOWNER. I am unable to see any very great line of divergence between your position and that of the Postmaster General. Will you be kind enough to indicate as succinctly as you can just what you claim to be that line of divergence between your conception of the law and his?

Mr. MADDEN. I have already explained it in the record. In connection with my discussion of the undertaking to reform the second class mail abuse—

Mr. TOWNER (interposing). But now you are speaking generally.

Mr. MADDEN. I am coming down to the particulars in just a moment. Now, then, the whole publishing industry is divided up into classes of publications; some magazines and newspapers—

Mr. TOWNER (interposing). Now, again, my inquiry refers particularly to those instances at St. Louis with regard to this particular action of the Postmaster General.

Mr. MADDEN. I can not make that clear without making this preliminary statement. If you want the matter clear, I will make it clear, if only for the sake of history. The Lewis publications fall into one of the classes that would be affected by the reform work that was contemplated. Now, in order that no injustice should be done to any man, when these reforms went into effect, it became important for the department to issue instructions or publish rules so that the publishers would understand just what the requirements were. Now, these mail-order publications had been following the practices that had been in vogue up to that time, and their statement was if they knew what the department required they would comply. The attorneys I have mentioned, Messrs. Bromwell and Weinschenk, appeared at the department for that purpose. I drafted the rules on the subject, and they have been read into the record. I had told the Postmaster General that I would place the Woman's Magazine and the Woman's Farm Journal in that mail-order class of publications, and that the hearing just prior to that had disclosed no reason to disturb their status. Now, then, these rules were issued, but he denied the Lewis Publishing Co. the benefit of these rules as to these two publications as against the whole country.

Mr. TOWNER. Now, state that specifically.

Mr. MADDEN. I think I did.

Mr. TOWNER. You stated he denied the Lewis Publishing Co. the benefit of the rules. Now, say specifically into the record, so I may understand, just what case he had before him upon which this denial was based, and upon what facts he based his action, if you have them within your personal knowledge.

Mr. MADDEN. I want to say one word there by way of explanation: As to the hearing of June 17 upon the Lewis Publishing Co.'s publications, a report was rendered to the Postmaster General showing that these magazines were then, so far as known, without fault. Subsequent to that report the promise was made to the publishers to publish rules for their guidance. Subsequent to the announcement that rules would be published for the guidance of the publishers I notified the Postmaster General that these publications, which had just previously been turned back to be handled along the usual lines, would be treated under these rules when published. Then the Third Assistant

Postmaster General went to work drafting the rules. There were several drafts, and they were submitted to the Postmaster General for approval.

Mr. ALEXANDER. Have you not already stated that in the record?

Mr. MADDEN. Yes, sir; but he asked me to repeat it.

Mr. AUSTIN. That shows the importance of listening to this statement.

Mr. MADDEN. Now, while they were in his hands unpublished, and after he had turned the case back to the Third Assistant Postmaster General, on July 12, to be handled along the usual lines, he sent these inspectors again into the Lewis Publishing Co.'s plant to make another investigation, and he did that without consultation with the classification division or the Third Assistant Postmaster General. Then, when the Lewis Publishing Co. complained of it to the Third Assistant Postmaster General, who was the proper officer to address, on October 12, 1905, I sent that letter, or a copy of it in my memorandum, dated October 14, 1905, to the Postmaster General, and called his attention to the extraordinary conduct, and lifted my hands from the case. He did not reply to that letter, but he notified Lewis, on November 6, that he was advised that the investigation was practically completed. Yet, he had, on July 12, returned the case to be handled along the usual lines. Now, Mr. Britt has his answer as to why things were not going in the usual course.

Mr. TOWNER. I was not asking you about the differences between you and the Postmaster General with regard to matters of administration. The proposition about which I asked you was this: What was the exact difference of opinion between you and the Postmaster General with regard to the law applicable to this particular case?

Mr. MADDEN. The difference was this—I think I get your point a little more clearly: For a long time the annual reports of the Postmaster General had been filled with references to these abuses of the mail, calling upon Congress to legislate upon the subject. Congress had not responded, and an administrative reform of the matter was undertaken. The publishers all the while were pleading to know what it was they were doing that was wrong, and offering to correct it. I felt confident about that time that they did not propose to deal squarely with this company—

Mr. TOWNER (interposing). Then, the question was one in which you did not agree with the Postmaster General in the manner in which he had administered the law?

Mr. MADDEN. Yes, sir; that is it.

Mr. TOWNER. I am trying to get at your specific complaint. You have also complained with regard to his taking the case out of your hands and acting independently of you?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. Through these post-office inspectors?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. Then, there are two specific things which you complain of?

Mr. MADDEN. Yes, sir. I had no personal complaint, except that I did not feel responsible for what was done.

Mr. MCCOY. Let me ask you a question: Are the duties of the Third Assistant Postmaster General prescribed by statute?

Mr. MADDEN. No, sir.

Mr. McCoy. How are they prescribed?

Mr. MADDEN. By regulations.

Mr. McCoy. And that was true at that time?

Mr. MADDEN. Yes, sir.

Mr. McCoy. Then your complaint was not that any law was being violated?

Mr. MADDEN. No, sir.

Mr. McCoy. If I understand your complaint rightly, it was this: At that time the administrative regulations placed these matters in your hands?

Mr. MADDEN. Yes, sir.

Mr. McCoy. And that, in July, 1905, this Lewis matter was, so to speak, put back into your hands with instructions that it should take the usual course?

Mr. MADDEN. Yes, sir.

Mr. McCoy. And the usual course was that all matters pertaining to this particular question should go through your hands?

Mr. MADDEN. Yes, sir; through the Classification Division.

Mr. McCoy. But that was in your division?

Mr. MADDEN. Yes, sir.

Mr. McCoy. And that on July 12, the date of that inspector's letter, the Postmaster General proceeded to handle the case himself, and that in itself was not the usual course?

Mr. MADDEN. That is right.

Mr. McCoy. But having, under the administrative rules, the responsibility for handling the matter, when you found that it was not being left to you, you declined to take the responsibility unless you had the handling of it?

Mr. MADDEN. Yes, sir; unless I had definite instructions.

Mr. McCoy. You declined to go ahead with it, except in an unusual way; that is, by referring everything to the Postmaster General and getting specific instructions from him, and the reason you did that was because his procedure was unusual; first, in taking it out of your hands, and then in putting it back and taking it out again?

Mr. MADDEN. Yes, sir.

Mr. McCoy. In other words, if you had the responsibility, you wanted the authority?

Mr. MADDEN. Yes, sir. I do contend that, while there was no statute fixing the duties of the Third Assistant Postmaster General, the Postmaster General is authorized by statute to fix these duties and when he fixes them, they are the law until he changes them.

Mr. AUSTIN. I do not think there is any question as to the authority of the Postmaster General to take that out of your hands.

Mr. MADDEN. In an orderly way.

Mr. AUSTIN. And the responsibility would be with the Postmaster General.

Mr. MADDEN. I should say that was a disorderly way of doing it. The Postmaster General had authority to fix the regulations, but he had no authority to take it out of the hands of the Third Assistant Postmaster General in this manner. If the Third Assistant Postmaster General was not conducting his office in a proper way, he could remove him or reverse him on appeal, or he could change his regulations and take the entire jurisdiction from him.

Mr. McCoy. I want to ask you this: The Postmaster General had the legal right to take this out of your hands at any time, did he not?

Mr. MADDEN. To deal with as a special case?

Mr. McCoy. Yes, sir.

Mr. MADDEN. No, sir.

Mr. McCoy. Suppose you illustrate that point.

Mr. MADDEN. Because the regulations made by the Postmaster General, placing the entire jurisdiction and the original jurisdiction in the Third Assistant Postmaster General was subject only to appeal to him, unless he changed the regulations.

Mr. McCoy. Now then, is not the act of taking a specific matter out of the hands of the Third Assistant Postmaster General, for any cause, a change in the regulations?

Mr. MADDEN. No, sir; because the regulations provide that there shall be no change without the publication of an order.

Mr. McCoy. But who prescribes the regulations?

Mr. MADDEN. The Postmaster General.

Mr. McCoy. Then he can prescribe new regulations.

Mr. MADDEN. But he did not in this case.

Mr. McCoy. But he did by his acts.

Mr. MADDEN. But the regulations require that when any change is made the change shall be published and posted for the information of all.

Mr. McCoy. But it does not strike me as being illegal. I am speaking of illegal acts; in other words, that there was nothing illegal about it. I appreciate the nature of your complaint of the way this thing was handled up there. It was irregular under the regulations.

Mr. MADDEN. That is all I claim.

Mr. McCoy. But you used the term "illegal."

Mr. MADDEN. I probably did not mean it in that sense.

Mr. McCoy. I think it is important that when you use terms in a hearing of this kind that we should clearly understand your use of the terms. You used the word "illegal," which ordinarily means a violation of the law, and I should say that this action was irregular and not illegal.

Mr. ALEXANDER. If it was the duty of the Postmaster General, or if he had the power under the law, to frame rules for the department and to define the jurisdiction of the several Assistant Postmasters General, and he made these rules, then, they had the effect of law.

Mr. McCoy. But he had the right to make another regulation.

Mr. ALEXANDER. But he had no right to violate the law in framing another rule.

Mr. McCoy. I could not agree with that——

Mr. ALEXANDER (interposing). Otherwise, he could do as he pleased and disregard the rules he had promulgated.

Mr. McCoy. I think the Postmaster General can disregard any rule which he makes if he sees fit, and that the effect would be to make another rule. I think, however, he was subject to criticism for doing it.

Mr. AUSTIN. Unless he could give a good reason.

Mr. McCoy. Yes, sir; unless he could give a good reason he would be subject to criticism, but there is no method prescribed by statute for formulating these rules.

Mr. BRITT. The statute does not say that they shall be written.

Mr. MADDEN. My contention is simply that the regulations had the force and effect of law, and there was no written or verbal alterations of these regulations before this case was surreptitiously taken out of my hands.

Mr. McCoy. That is a matter of criticism, but it is not a matter to be designated as illegal.

Mr. AUSTIN. You take the position that the Postmaster General had no right to take this action. Suppose he had reason to believe that the Third Assistant Postmaster General had a wrong view of this case. Would it not be his duty, as the head of the Post Office Department, to take it out of his hands?

Mr. McCoy. I should say, if I were the Postmaster General, that I would call the attention of the Third Assistant Postmaster General to the fact that he was taking the wrong view, but I understand Mr. Madden to say that he did not do that, but told him to proceed in the regular way, which would leave it to Mr. Madden. Then the Postmaster General continued to handle the case himself.

Mr. AUSTIN. I think it barely possible that Mr. Cortelyou disagreed with the Third Assistant Postmaster General in the handling of this case.

Mr. McCoy. Apparently he took it out of his hands because he wanted to. All we know is that he took it out of his hands.

Mr. BRITT. There seems to have been a difference of opinion both as to province and duty in relation to this matter, as appears from the letter the Postmaster General addressed to you on the 14th of April, 1906, in which he requested you, or directed you, to make an investigation into the two publications named in this inquiry, telling you to determine two questions, namely, first, whether the publications were entitled to be transmitted through the mails at second-class postage rates, and, second, if they were so entitled, how many copies of such publication were entitled to be transmitted, and directing you to give the Lewis Publishing Co. a hearing on these points. It appears that you did, in obedience to this direction, issue a formal citation, directing the publishers to appear before you and answer on these two specifications.

Mr. MADDEN. I differ with you there. The record will bear me out.

Mr. BRITT. We challenge the record on that. When the parties appeared before you, they requested, through their counsel, to be informed whether at that hearing, which, according to the terms of your citation, was to be held on the 30th day of April and the 1st day of May, 1906, the counsel requested that you inform them at the beginning of the hearing whether they were to respond to the two items of accusation embodied in the citation, and it appears that you, on your own authority, waived one of these questions, to wit, the main question of the right of the publication to the second-class privilege, which the Postmaster General in his letter to you had directed you to inquire into, and which you, in your citation, had named as one of the grounds. You waived the first one of these grounds in response to the counsel's inquiry and held the hearing upon the sole question of the number of copies to which the publication was entitled for transmission through the mails.

Mr. McCoy. Mr. Britt is coming down to 1906, and we were talking about 1905 up to this point.

Mr. MADDEN. I have all this matter for the record, but I think it is important that I make a statement in regard to this at this time. I think Mr. Britt is mistaken in saying that the Postmaster General directed the order in which these questions should be heard and decided. The record, however, will speak for itself on that. He is in error in saying that the company was notified to appear in answer to the question of its second-class privilege. It was merely notified that the second-class privilege was in question, and it was manifestly absurd to say that the question of second-class rates was to be decided before the question of excessive copies had been decided, because the question of the second-class privilege depended upon the question of whether excessive copies had been mailed. So that contention is entirely wrong.

Mr. BRITT. You are aware that there were other requisites and requirements for the publications to meet to be entitled to this privilege than those involved in this inquiry, and the question might have been raised as to whether there was opposition to other requisites which were not brought into the question.

Mr. MADDEN. My report upon that hearing will show. I believed that the clear-cut question which must be determined was that of excessive copies. If there were no excessive copies, the question of the right of the publications would not be resisted, because that was the only thing against them.

Mr. MCCOY. Was that the only thing complained of by the department?

Mr. MADDEN. Well, the postmaster had alleged that they were primarily for advertising purposes, etc.; but, so far as we had information, they were not violating the law any more than any other publishers. All publishers admit violating that law. The publishers of daily newspapers have testified that they could not exist without violating it, and all violated it. Now, you can not enforce that clause justly against one publisher in order to punish him for something, if you are going to let others go on violating it.

Mr. MCCOY. In other words, so far as this particular question raised by Mr. Britt is concerned, you were proceeding upon the supposition that the Postmaster General would defer that until it could be determined as to all other publishers?

Mr. MADDEN. Yes, sir.

Mr. MCCOY. That can be developed when the Postmaster General puts in his case, or do you consider it as essential to have it in now?

Mr. BRITT. I am willing to defer the development of that with this statement, that the Postmaster General did direct Mr. Madden to make this investigation, and that he requested an inquiry into the two matters I have mentioned and in the order in which I have mentioned them; that Mr. Madden, in furtherance of that direction, issued his citation, and issued his citation in the order in which the Postmaster General had directed him to make the inquiry, but that upon the appearance of the publishers he then waived that order of inquiry and did not inquire into the first request of the Postmaster General at all, but did inquire into the other.

Mr. MCCOY. Do you consider the order in which the two matters of inquiry were mentioned in the letter of the Postmaster General to Mr. Madden had any significance?

Mr. BRITT. I do not consider that the order had significance, but I do consider that the waiving of the inquiry as to one of the matters would have significance as tending to show that there was insubordination on the part of Mr. Madden in relation to his chief, the Postmaster General. I do not say it proves it, but I say it tends to prove it.

Mr. AUSTIN. I would like to read into the record this extract from a letter addressed to Mr. Madden, Third Assistant Postmaster General, by Postmaster General Cortelyou, dated April 14, 1906:

You will please immediately institute an investigation for the purpose of determining whether the Woman's Farm Journal and the Woman's Magazine, issued by the Lewis Publishing Co., are entitled to second-class privileges; and if so, what number of copies of each publication should be admitted to the mails monthly at the rate of 1 cent per pound. This investigation should be thorough and comprehensive, and in pursuance of it the company should be afforded early opportunity to be fully heard upon the questions involved.

Did you carry out those instructions from your superior officer?

Mr. MADDEN. Yes, sir.

Mr. ALEXANDER. Is it not well enough to wait until the department presents its case here before going into this? This way of trying the case does not suit me.

Mr. MADDEN. I will resume my general statement.

This letter of the Postmaster General to the Third Assistant, dated March 22, 1906, is another disclosure of the unusual lines which were being followed in this case, and the methods which were being employed to accomplish results in St. Louis. This was the first instance in history of the Postmaster General requiring the Third Assistant to submit for scrutiny a ruling made by him and over his name and title.

As the letter of the local postmaster to the Third Assistant, March 15, and the "personal" letter of inspector Fulton of the same date to the chief post-office inspector show, a ruling by the "proper officer" was required to supply the deficiency in the postal laws, for—

What the attorneys will need as evidence through the postmaster will be the postmaster's testimony to the effect that the legal rate chargeable on these publications mailed in excess of the number to which the publishers were entitled is 1 cent per copy (or for each 4 ounces) when sent to a single address.

Here it is necessary to make an explanation. It has been stated that the Third Assistant Postmaster General was reforming the abuses of the second class of mail matter. One of the alleged abuses was the mailing of too many sample copies by publishers. That was regarded as an abuse, although the law gave them an unlimited privilege while the publication remained of the second class. The real remedy of the department was to rule such a publication out of the second class. But the reform was designed to be conducted and to accomplish its purposes with as little damage to the publishing industry as possible.

The office ruling of the Third Assistant was to the effect that any publication of which more sample copies were regularly mailed than subscribers' copies would not be admitted to the second class, on the ground that it was primarily designed for free circulation, and so prohibited by law. That rule served on the question of admission. Something must be done with those who violated the limit after admission. Under the act of 1901 a publication could not be ruled out of the second class for any cause until a hearing

had been accorded the publisher. It was the practice also at the hearing to decide not to rule the publication out of the second class if the publisher would cease his violation of the limitation, namely, 100 per cent of sample copies upon the subscription list. This practice is clearly stated in the case of *Conant v. Payne*. Conant was the publisher of a publication, known as "Salvation." He was warned that excess mailings of sample copies would cause his publication to be ruled out. He continued nevertheless. He was then cited to a hearing, as required by the act of 1901. He stood upon what he conceived his right to mail without limit. The Third Assistant ruled his publication out of the second class. Conant then applied to the court. The court sustained the ruling of the department. A printed copy of the court's opinion and decision, known as Circular IV, of the office of the Third Assistant Postmaster General, is herewith submitted as Exhibit No. 17.

EXHIBIT No. 17.

Circular 4.—Issued by the Post Office Department, Office of the Third Assistant Postmaster General.

In the Supreme Court of the District of Columbia. *William Cowper Conant v. The Postmaster General*. Equity No. 24361.

(Syllabus by the Department, with reference to paragraphs of opinion.)

I. The proportion borne by the number of copies regularly circulated to persons listed as subscribers to the total number of copies circulated, as well as the proportion of sample copies to the whole circulation, are competent evidence upon which a conclusion may be reached that the publication is designed primarily for free circulation, and does not have a legitimate list of subscribers. (See pars. 12, 35, and 36.)

II. Where a considerable proportion of the persons listed as subscribers appeared to be those whose subscriptions had expired; held, that such persons could not reasonably be counted as a part of the legitimate list of subscribers. (See pars. 14, 35, and 36.)

III. The fact that the publication is conducted for high moral or religious purposes does not except it from an exact compliance with the law regulating circulation and providing for a legitimate list of subscribers. (See pars. 6 and 7.)

IV. A certificate of entry being a departmental device for convenience of administration is, at most, a permit or license revocable at any time, and the publisher being bound to take notice of that fact, may not rely upon such certificate as vesting a right to the continued admission of the publication irrespective of its true character and the method of its circulation. (See pars. 18 and 19.)

V. It is the duty of the Postmaster General to determine in each particular case whether, as a matter of fact, the publication has a legitimate list of subscribers as well as whether it is designed primarily for advertising purposes, or for free circulation, or for circulation at nominal rates, and inasmuch as the statute does not prescribe how these facts are to be ascertained the method of doing so is left to the Postmaster General in the exercise of sound judgment and discretion. (See pars. 21 to 30, inclusive.)

VI. In the proviso of section 14, act of March 3, 1879, excluding publications designed primarily for advertising purposes, etc., the term primarily is used in the sense of "in the first place," "principally," "chiefly," and does not mean merely the original intention of the publisher, but the principal intention or design with which the publication is actually being conducted. (See pars. 31 to 33.)

VII. The question whether the publication is designed primarily for advertising purposes, or for free circulation or for circulation at nominal rates, as well as whether it has a legitimate list of subscribers, are all questions of fact committed to the Postmaster General, whose decision thereon is conclusive. (See par. 34.)

VIII. While the statute does not put any express limitation upon the number of sample copies circulated such copies must be samples in fact, and the publisher seeking to obtain the benefit of the statute must show the utmost good faith and not attempt to evade it by any device. (See pars. 35 and 36.)

IX. The construction of the statute by the Post Office Department to the effect that the number of sample copies must not exceed the number actually circulated to subscribers is not only a reasonable interpretation of the law but liberal to the publisher; for wherever the publication regularly circulates more copies free than copies paid for there is an irresistible inference that the publication is chiefly designed for free circulation. (See par. 36.)

Mr. William A. Meloy for the complainant; Mr. Henry H. Glassie for the defendant.

Mr. Justice Anderson delivered the following opinion:

1. The bill in this case has been filed by the complainant against the respondent for the purpose of having a certain monthly publication issued by the former, called "Salvation," declared to be entitled to be entered, received, and transmitted through the mails, as mailable matter of the second class under the act of Congress of March 3, 1879, and also for a restraining order pending this suit, and upon final hearing a permanent injunction restraining and prohibiting the Postmaster General from enforcing the cancellation of a certificate of entry heretofore issued by the Post Office Department to the effect that such publication was entitled to be so entered, received, and transmitted.

2. The complainant sets out in his bill that heretofore, to wit, in about the month of January, 1899, at the city of New York, he undertook to and did enter upon the editing, printing, and publishing of a new evangelical monthly under the name and style "Salvation," and that he has ever since been, and is now, engaged in editing, printing, and disseminating the same through the mails—a copy of which publication he files as an exhibit to his bill.

3. The complainant further avers that when entering upon the publication of "Salvation" he submitted the same, together with the requisite affidavits and proofs, to the postmaster at the city of New York, and applied for a permit of entry for said publication to the mails at second-class rates. A temporary permit to so enter and transmit said publication at those rates, until such time as the Post Office Department should determine whether it was admissible as second-class matter, was granted by the postmaster at New York under authority of the Postmaster General upon the faith of the affidavits and other proofs submitted by the complainant pursuant to the authority conferred by section 282 of the Postal Regulations of 1893. This temporary permit was granted about February 25, 1899.

4. Following this, on April 3, 1899, a certificate of entry of this publication as second-class mail matter was issued by the postmaster at New York under the authority of the Postmaster General and pursuant to his instructions, to the effect that the Third Assistant Postmaster General had determined that the publication "Salvation" was entitled to admission to the mails at the pound rate of postage. This certificate, in common with all such certificates, concluded with the words: "Valid while the character of the publication remains unchanged."

5. The bill then avers that from the date of the aforesaid application, viz, January, 1899, and from the date of the certificate of entry, such publication has remained unchanged. The bill further avers that, relying upon said certificate and permission, the complainant has accepted subscriptions under the same, and is now obligated to continue to edit, print, publish, and deliver through the mails a large number of copies of his publication each month for many months to come.

6. Paragraph 7 of the bill describes this periodical, showing that it is issued at stated intervals, as frequently as 4 times a year, i. e., 12 times a year; avers that it contains no matter subject to a higher rate of postage than that of second-class mail matter, and that each monthly issue bears the date thereof, and is numbered consecutively, etc.; also describing how it is made up, viz, of printed sheets, without covers, in the manner of books and the like for the permanent preservation thereof, and alleging that it was originated and published, and has ever since been published, for the dissemination of information of a public character and having a legitimate list of actual bona fide subscribers. "Nor was the same," it is averred, "ever designed primarily for advertising purposes, or for free circulation, or for circulation at nominal rates, but on the contrary said publication was from the beginning and always designed primarily and exclusively for the spreading of pure nonsectarian religion by the dissemination of information of such character, and for the broadening and elevating the moral ideas of the general public on every line calculated to heighten, expand, and liberalize their moral sense and make them better citizens." It may be remarked at the outset that the alleged purpose of the publisher in this respect is not an issue here. Nothing can be said against the moral tone of the paper. That question is not involved in this inquiry at all.

7. The next paragraph of the bill recites that, throughout the period of its publication, the complainant has had a regular bona fide and legitimate list of paying subscribers thereto, varying somewhat in number but now, and generally, amounting to about 400, besides which he avers he has been, and is now, sending out a considerable number of copies to persons not subscribers to awaken and enlist attention to the religious and moral purposes of said publication—to rouse interest therein and so to induce subscription and widen its sphere of influence—to which end the complainant says he is now sending out, and desires to continue to send out, a number of copies greater than the number of subscribers, until the number of the latter so invited shall come to exceed that of the former.

8. The tenth paragraph of the bill recites that on the 16th of June, 1903, the complainant was cited to show cause before the Third Assistant Postmaster General why this publication should not be excluded from the mails as second-class mail matter on the ground that "its circulation does not conform to the requirements of the law (act of March 3, 1879); that thereafter a hearing was had, and under date of October 3, 1903, complainant was notified that the certificate of admission of "Salvation," a second-class matter, had been annulled.

9. The statute governing the admission of publications to the second-class rates of postage (act of March 3, 1879), provides as follows:

"Fourth. It must be originated and published for the dissemination of information of a public character, or devoted to literature, the sciences, arts, or some special industry, and having a legitimate list of subscribers: *Provided, however, That nothing herein contained shall be so construed as to admit to the second-class rate regular publications designed primarily for advertising purposes, or for free circulation, or for circulation at nominal rates.*"

The grounds upon which the certificate or permit issued by the Postmaster General to this publisher was later revoked are found in this proviso.

10. The bill of complaint alleges that the complainant's publication is not designed primarily for advertising purposes, or for free circulation, or for circulation at nominal rates, and therefore the complainant contends that he is entitled to the benefit of the statutory privilege of transmitting said publication through the mails at pound rates.

11. The answer of the respondent, on the contrary, avers that the complainant's publication is not entitled to the postage rates of second-class mail matter, for the reason that it is designed primarily or principally for free circulation; and the answer gives certain facts and figures showing the character of its circulation. These are found in paragraphs 8 and 10 of the answer, where the objections to the complainant's subscription list are specifically pointed out.

12. The answer further states that, the attention of the Post Office Department having been drawn by the postmaster at New York to certain facts tending to show that the circulation of the complainant's publication was largely gratuitous, the complainant was, on or about March 10, 1903, requested to submit a statement as to his subscription list and circulation, in the form of answers to certain interrogatories upon a blank form commonly used for that purpose; and that such answers so submitted by the complainant showed that out of a total number of 2,100 copies regularly printed, but 410 were regularly circulated to persons listed as subscribers, whereas 850 were regularly circulated under the guise of sample copies without any payment therefor, 144 were circulated in the form of exchanges, and the residue to the number of about 700 were also circulated free in other forms.

13. The answer goes on to say that an examination of the subscription books of the complainant, made by the postmaster at New York at the same time, disclosed that there were 455 names listed as subscribers; 59 were paid to volume No. 5 (which was the then current volume), 80 were paid to volume No. 4, 118 were paid to volume No. 3, 191 were paid to volume No. 2, 7 were paid to volume No. 1.

14. It thus appeared, the answer further avers, that, although the publication was then in its fifth volume, but 59 of the persons carried as subscribers had paid for subscriptions for that volume, and but 80 had paid for subscriptions up to and including the fourth volume, whereas 316 persons carried as subscribers were persons whose subscriptions had expired at least two years previously; and that taking these facts in conjunction with the statement of the publisher as to the 850 sample copies, it appeared that 1,166 copies were regularly circulated free as against 139 copies circulated to persons who had actually subscribed for the current volume or who by reason of having subscribed to the previous volume might with any show of reason be held to be continuing their subscriptions upon credit.

15. The answer further avers that the complainant was given the opportunity of bringing himself within the statute, and yet notwithstanding such opportunity he failed to establish or to attempt to establish that the primary design of said publica-

tion was other than that indicated by the facts hereinbefore set out; and that thereupon, on or about the 16th of June, 1903, complainant was duly notified that he would be accorded a hearing at a given date at the office of the Third Assistant Postmaster General, and such hearing was had, with the result that the Post Office Department determined that the complainant's publication did not come within the privileges of second-class mail matter.

16. There is no question as to the absolute fairness on the part of the Postmaster General in giving to the complainant here every opportunity to enjoy the rates fixed for second-class mail matter. He simply insisted that the complainant should comply with the conditions of the original permit; that is, that in the publication of his paper or magazine, he should steadily adhere to its original character. He was given the most ample opportunity to meet the objections pointed out by the Post Office Department, but he took no steps whatever in that direction, on the contrary standing squarely upon his rights, as he interpreted them; that is, that his paper did come within the provisions of the statute and that the interpretation of the law by the Post Office Department was erroneous and unjust. So there can be no complaint here that he was not given ample opportunity to meet the objections offered by the Post Office Department.

17. Now it is claimed by the complainant here that the right to have his publication carried in the mails as mailable matter of the second class is a valuable property right and one which can not be taken away from him in the manner in which it has been done in this case. This right for which the complainant contends is predicated upon the sixth paragraph of the bill, which says that:

"relying upon said certificate and permission your orator has accepted subscriptions and under the same is now obligated to continue to edit, print, publish, and deliver through the mails several hundred copies of said publication each month for many months to come."

18. This point, it seems to me, is not well taken. The issuance of this certificate was at most a mere permit or license admitting to the mails as second-class matter the publication in question "so long as the character of the publication remains unchanged," and no right whatever was thereby vested in the complainant in respect of the continued admission of such publication to the mails as second-class matter. His right to enjoy the benefit or privilege thus granted was in no event to continue longer than while "the character of the publication remains unchanged." Moreover, the statute makes no provision whatever for these certificates or permits. They are simply issued under the authority of the Postmaster General to the publishers of magazines and like periodicals, as a mere departmental regulation—simply as a part of the machinery of the Post Office Department employed in the administration of its business. Being a mere departmental regulation adopted for the purpose of expediting the business of the Post Office Department, the permits issued under it may be revoked whenever and as often as the Postmaster General determines that those to whom they were issued are no longer entitled to them. The issuance of these certificates is only a means to an end. They are simply factors in a great system of business. It is like the case of a man going into business. He establishes what he denominates a system of conducting it. It is his own. It represents his best business judgment as to how his business should be conducted. So long as his system of business violates no law he may change it, and will change it, if a progressive and prudent business man, as experience suggests a better way of doing things. So here, these permits, not being named or provided for by the statute, but having been adopted by the Postmaster General as a convenient means of notice to publishers of their right to have their publications transmitted through the mails at a given rate of postage, so long as the character of such publication remains unchanged, they may be changed or revoked at any time, and of this fact every publisher is bound to take notice.

19. This view of the power of the Postmaster General seems to be recognized and settled in *Houghton v. Payne* (194 U. S. 1), and in *Smith v. Payne* (194 U. S., 15), recently decided by the Supreme Court of the United States. In those cases the certificates had been outstanding for a period of years, and it was contended, as here, that, relying upon these certificates and the authority thus given, the publisher had made certain contracts, and had thereby acquired certain vested rights of which he would be deprived if such certificates were revoked, and that therefore such certificates could not be revoked to his prejudice; but the Supreme Court held otherwise. I quote from the syllabus of the *Houghton v. Payne* case:

"The fact that publishers may have made contracts for the future delivery of their publications at prices founded on confidence in the continuance of the certificate of admission to the mails at second-class rates, issued under a former administration of the Post Office Department, does not entitle them to an injunction restraining the

present administration from ascertaining the true character of the publication and charging the legal rate accordingly."

20. Thus it is recognized, in so many words, that it is the plain duty of the Postmaster General, in the administration of his department, to ascertain the true character of these publications and to charge the legal rate accordingly, and to revoke certificates of admission as, in his judgment, it is his duty under the law to do so. Now, how he should ascertain this fact the statute does not prescribe; but it is made his duty none the less to ascertain it, and hence he is free to proceed in the matter in such manner as to him seems best.

21. As already stated, it is averred in the bill that the character of this publication has remained unchanged, and that therefore his license is not invalid, as determined by the Postmaster General, and hence the revocation of his license is unlawful. The answer, however, points out the respects in which the character of the publication has been changed. The tenth paragraph states very fully and in detail what the objection is to this publication, viz, that it does not have a legitimate list of subscribers, and that it is or was evidently designed primarily for free circulation and for advertising purposes. In the administration of his office the Postmaster General is bound to determine in each particular case whether a given publication is entitled to be admitted to the mails as second-class matter. The determination of that question is but one of many administrative acts imposed upon him by the law. It is made his duty to administer that department so as to carry out the purpose of its creation and the meaning of the statute, and that necessarily involves the exercise of sound judgment and discretion in the determination of many questions that come before him.

22. If the court is correct in the conclusion that this is a matter within the jurisdiction of the Postmaster General, then, it being one that obviously requires the exercise of discretion, he can not be controlled by the judicial power.

23. Now, let us see what the Postmaster General did. After answering all the paragraphs of the bill in their order, he says:

"Answering generally to the whole bill, the defendant says that he, as Postmaster General of the United States, is charged by law with the duty of superintending generally the business of the Post Office Department and of executing all laws relative to the postal service; that among such duties is that of classifying the mail matter offered for transmission through the mails and distributing the same into the respective classes created and designated by law, in the course of which classification it becomes incumbent upon him to investigate and ascertain whether matter offered for transmission as second-class matter does or does not comply with the conditions upon which the law permits publications to be admitted as second-class matter, and whether in point of fact such matter is second-class matter or matter of some other class. That such investigation and determination exercised by the Postmaster General for the time being as the head of an executive department, in the ordinary discharge of his duties, requires an inquiry into facts, an examination of evidence, and the application of the law to the facts. That in the case of the publication hereinbefore mentioned, after an inquiry into the facts relevant and material, an examination of evidence and an application of the law to the facts, he, acting through the Third Assistant Postmaster General in that behalf, found and determined that by reason of the facts hereinbefore set out in the tenth paragraph of this answer, the publication of the complainant, in respect of its circulation and its list of subscribers, had not the statutory characteristics of second-class mail matter and did not fulfill the conditions established by law for matter of that class; but on the contrary held and determined upon the facts and evidence aforesaid that such publication is designed primarily for free circulation and had not in fact a legitimate list of subscribers. Wherefore he held and determined that the said publication, falling under the express prohibition of the statute in that behalf, was not entitled to further transmission in the mails as second-class matter, and that the certificate authorizing such transmission should, for that reason, be revoked and become inoperative in the future. And the defendant submits that such finding, determination, and decision involved the exercise of judgment and discretion on the part of this defendant and of the Third Assistant Postmaster General acting in that behalf, and for that reason is not subject to be reviewed by this honorable court."

24. Now, it has been the uniform holding of the Federal courts that an executive officer, when engaged in the performance of his duties involving the exercise of judgment and discretion—which was all in fact he did in this case—can not be interfered with in respect to such duty by the judicial power.

25. Mr. Justice Brown, in the case of *New Orleans v. Pain* (147 U. S., 261)—also cited at page 32 of opinion filed by this court in *Bullette v. Hitchcock*, Equity No. 23,991—in delivering the opinion of the Supreme Court said:

"The general rule is that the judicial power will not interpose, by mandamus or injunction, to limit or direct the action of departmental officers in respect of matters

pending within their jurisdiction and control. * * * That if he (meaning the head of a department) were engaged in the performance of a duty which involved the exercise of discretion or judgment, he was entitled to protection from any interference by the judicial power."

26. The Supreme Court of the United States also said, in the case of *Dunlap v. Black* (128 U. S., 48):

"The courts will not interfere by mandamus with the executive officers of the Government in the exercise of their ordinary official duties, even where those duties require an interpretation of the law, the court having no appellate power for that purpose. * * * whether, if the law were properly before us for consideration, we should be of the same opinion or of a different opinion is of no consequence in the decision of the case."

27. Again, in the case of *Kirwan v. Murphy* (189 U. S., 55), the Supreme Court, quoting the language of *Litchfield v. Register* (9 Wall., 575), said:

"The principle has been so repeatedly decided in this court that the judiciary can not interfere either by mandamus or injunction with executive officers such as the respondents here, in the discharge of their official duties, unless those duties are of a character purely ministerial, and involving no exercise of judgment or discretion, that it would be useless to repeat it here."

28. Associate Justice Miller, in delivering the opinion of the Supreme Court in *Gaines v. Thompson* (7 Wall., 347, 352, 353), said that this doctrine—

* * * Is as applicable to the writ of injunction as it is to the writ of mandamus.

"In the one case the officer is required to abandon his right to exercise his personal judgment, and to substitute that of the court, by performing the act as it commands. In the other he is forbidden to do the act which his judgment and discretion tell him should be done. There can be no difference in the principle which forbids interference with the duties of those officers, whether it be by writ of mandamus or injunction."

29. In *Mississippi v. Johnson* (4 Wall., 498) the Supreme Court draws a distinction between a ministerial and judicial duty in this language:

"A ministerial duty, the performance of which may, in proper cases, be required of the head of a department, by judicial process, is one in respect to which nothing is left to discretion. It is simple, definite duty, arising under conditions admitted or proved to exist, and imposed by law."

30. Again, Mr. Justice Miller, in *Johnson v. Towsley* (13 Wall., 72, 83), says:

"When the law is confided to a special tribunal, the authority to hear and determine such matters arising in the course of its duties, the decision of that tribunal, within the scope of its authority, is conclusive upon all others."

31. Now, there can be no question as to the right and duty of the Postmaster General to determine the classification of mail matter. The determination in this particular case as to whether this publication was entitled to be admitted to the mails at the second-class rates was entirely within the jurisdiction of the Postmaster General, and, therefore, in the language of Mr. Justice Miller, "the decision of that tribunal, within the scope of its authority, is conclusive upon all others." The complainant, however, concedes that the Postmaster General has the right, in the first instance, to pass upon the admissibility of his publication, but insists that the Postmaster General in revoking his certificate of April 3, 1899, whereby complainant's publication was excluded from the privilege of second-class mail matter, exceeded his authority by interpreting the word "primarily" used in the statute as meaning "principally." This, it is insisted, introduces a different meaning into the statute itself, because the words "principally" and "primarily," it is argued, are words of diverse meaning. The language of the statute is—

"*Provided, however,* That nothing herein contained shall be so construed as to admit to the second-class rate regular publications designed primarily for advertising purposes." * * *

32. The Post Office Department has seen proper, in its instructions and correspondence, to inclose in parentheses the word "principally" as indicating the sense in which the word "primarily" is to be understood, and it is claimed by the complainant that, by the interpolation of that word, the whole meaning of the statute has been changed. I do not so understand it. In speaking of things, we frequently say that the "primary" object of a thing is thus and so, or that its purpose is primarily so, and secondarily something else. The word "primarily" as used in the statute simply means "in the first place," "principally," "chiefly," as applied to the purpose for which a publication is issued, implying that secondarily it may have some other purpose. Of course, one of the secondary purposes is to secure advertisements, to enlarge its field of circulation, by constantly enlarging its lists of subscribers, and thereby its sources

of income, and the like, but the statute expressly provides that its primary purpose must not be, in any event, advertising or free circulation.

33. I do not attach any especial importance to this criticism. The Post Office Department has not laid down any arbitrary definition. What has been done is simply the application of plain common sense to the situation. A set of men form a company and obtain a charter for the purpose of carrying on a particular kind of business. The primary purpose of the corporation is that designated; secondarily, it may be something that is cognate or akin to it, but, if the corporation goes beyond the scope and purpose for which it was primarily organized, it forfeits its charter. Now, in determining whether there has been any violation of the charter, you do not depend upon a mere definition, but you look at the business itself to see whether the business carried on is in keeping with the authority granted by the charter.

34. Now, here is a publication that is being sent out through the mails, and the Postmaster General, looking at the statute, reads: "That nothing herein contained shall be so construed as to admit to the second-class rate regular publications designed primarily for advertising purposes," etc. How is he going to determine that matter? Clearly, the word "primarily" does not mean merely the original intention or the intention which the publisher may have had at the outset, to the exclusion of the intention or purpose for which it is actually being published at the time. Such an interpretation would do violence to the plainest principles of common sense and would enable any designing publisher to set the statute completely at naught. In the beginning, certain proofs must be furnished before a publication can be admitted to the mails as second-class matter. The Post Office Department must be satisfied that its primary purpose is not for advertising, or for free circulation, or for circulation at nominal rates. But there comes a time possibly when suspicion is aroused by the very character of the publication and the purpose for which it is being circulated. At once the question is presented: Has this publication "changed in character," has it come to be, after all, for advertising purposes, for free circulation, or for circulation at nominal rates? In investigating that matter, you would get at the primary purpose of the publication as it was then being conducted, and not from what it was originally or what was claimed for it. You would ascertain the truth about it, and determine its character in the light of the very purpose for which it is then being conducted because the question is strictly a question of fact, as to the main or principal purpose of the thing which is going through the mails. Nor does it follow because the question involved in such determination is a question of fact that the legal situation here is changed. The United States Supreme Court, in the case of *Bates & Guild Co. v. Payne* (194 U. S., 19), said:

"Where Congress has committed to the head of a department certain duties requiring the exercise of judgment and discretion, his action thereon, whether it involves questions of law or fact, will not be reviewed by the courts unless he has exceeded his authority or this court should be of opinion that his action was clearly wrong."

Again:

"Where the decision of questions of fact is committed by Congress to the judgment and discretion of the head of a department, his decision thereon is conclusive.

35. It is also urged that the Postmaster General erred in holding (among other things) that the publication is no longer entitled to admission to the mails as second-class matter upon the ground that the number of sample copies sent through the mails exceeds the number sent to actual subscribers and that this fact justified the conclusion that the publication is primarily for free circulation.

36. Now, this inference from the facts, as to circulation, is a matter of general administration of the office. It is not fixing an arbitrary rule, a mere something to meet the whims of the Postmaster General, but it is the application of a test, which, in the judgment of the Postmaster General, is fair to the publisher. The law permits the mailing of sample copies. The law must not only, however, be honestly executed by the department itself, but it must be honestly and faithfully obeyed by the person who is seeking to obtain the benefit of its privileges. He can not evade it by any sort of device. He must show the utmost good faith. Now, it seems to me that this rule as to sample copies is a reasonable one, namely, that they shall not exceed the number actually circulated to subscribers. Under the rulings of the Post Office Department, if a man is sending out 10,000 copies of a publication to a bona fide list of subscribers, he may send out a corresponding number of sample copies. I can not conceive of a more reasonable interpretation of the law than that. Certainly it is fair to the publisher, and it is taxing the liberality of the Government to the utmost. In my judgment, the construction or rule that has been applied here is entirely reasonable. I quite agree with what counsel for the defendant says in his brief:

"For, if a publication should regularly circulate more copies free than copies paid for, the inference would be irresistible that it was for the sake of the free circulation, rather than the paid circulation, that the paper was published. The circulation of such a paper would not be in response to any demand for the paper, evidenced by a willingness to pay for it. The primary design would be no longer to disseminate information of a public character. The primary design would manifestly be to get the paper into the hands of as many people as possible, in the interest of the publisher or some other person, whether they paid for it or not. While some of the people receiving it might be paying for it, the plain fact that the greater part of the circulation was entirely free, would be overwhelming evidence that free circulation was its principal object."

37. So that, to sum up in a word, the court will not review the finding of fact made by the Postmaster General to the effect that the complainant's publication has not a legitimate list of subscribers and is designed primarily for free circulation within the meaning of the statute, in the absence of any showing that he has exceeded his authority or that his action is clearly and manifestly wrong. Even if the court were, however, reviewing the finding of the Postmaster General, it would be constrained to hold that the facts set out in the answer so far support and justify that finding that it can not be regarded as an abuse of discretion. Whether a publication is designed primarily for free circulation, or has not a legitimate list of subscribers, are both questions of fact, and the determination of the Postmaster General thereon is final.

38. For the reasons stated, the prayer for an injunction will be denied, and the rule to show cause discharged.

THOMAS H. ANDERSON, *Justice*.

Mr. McCoy. In this case of *Conant v. Payne*, did I understand you to say that that case decided by the court upheld this method of ascertaining by a rule of thumb whether or not the publication was entitled to the second-class rates, that is, if the sample copies were in excess of the regular subscriptions, it was not entitled?

Mr. MADDEN. No, sir; not entitled to continue.

Mr. McCoy. And the court held that that was a proper rule?

Mr. MADDEN. Yes, sir.

Mr. McCoy. I understood you to maintain that the law did not have in it any such provision?

Mr. MADDEN. No, sir; the statute does not contain that. The department has a remedy if the publisher violates the rule, but the statute simply gives him a hearing. The publisher was to be given full opportunity to amend his practice and come within the rule.

Mr. McCoy. I am a little confused as to what you contended. I understood your contention to be that there was nothing in the law which would prevent a publication, once in the second class, from mailing just as many sample copies as it wanted to, say, 10,000,000.

Mr. MADDEN. Yes, sir.

Mr. McCoy. Now, if the law is so, I do not understand the basis of the decision in the case of *Conant v. Payne*, which sustains a regulation of the department which, it appears to me, practically qualified the law.

Mr. MADDEN. Only this: The Postmaster General had the administration of the prohibitory classification statute, of which the language is this: *Provided, however*, That nothing herein contained shall be so construed as to admit to the second-class rate regular publications designed primarily for advertising purposes, or for free circulation, or for circulation at nominal rates."

Mr. McCoy. Then, what the court decided in the case of *Conant* against *Payne* was that the department had provided a rule of transmission, and that they had the right to do that, and that presumably

any publication mailing more than an equal number of sample copies to the number of regular subscribers was within the proviso of the statute?

Mr. MADDEN. Yes, sir.

The court's opinion recites the practices of the department as stated, but it was desirable in administration to avoid all unnecessary citations. Therefore, the Third Assistant's office would, as a matter of form, instruct postmasters in all proper cases to require excess postage at the rate of a cent for each 4 ounces or fraction on copies mailed in excess of the limitation, the Third Assistant reserving to himself the management of the case thereafter, according to law.

This excess postage rate was required to be paid by stamps affixed. If paid without protest, the act of the publisher was construed as voluntary, in order to avoid a citation and a threatened ruling of his publication out of the second class altogether. If a publisher resisted, as was his right, and was cited to a hearing, as provided by the act of 1901, his mail could not be held in the meantime, because the statute made detention a penal offense for postmasters, the lawful postage rate being paid according to the class of the matter for the time being.

This method was simply a device of administration to accomplish a purpose deemed to be proper, equitable to publishers and the Government alike, but contrary to the express language of the law. To state the matter differently, if a publication might be denied admission to the second class for the reason that too many sample copies were mailed, it follows that a publication in the second class might be and should be put out of that class for the same reason. If it were kept out of the second class for that reason, or put out of that class for that reason, it could not be kept out of that class, if the objection were removed. But, as the law stands, while a publication is of the second class, the right to mail copies without limit may not be suspended or annulled without a hearing. Strictly speaking, as the law reads the action of the department should be simply that of admission or rejection as a whole, according to whether the rule were or were not violated, the court having determined that the rule was proper and "consistent with law."

But to repeat, a publisher might stand upon his right, as the publisher of Salvation did, to mail all copies of his publication at a cent a pound, as provided by the act of 1885, as long as his publication, was "of the second class." His right to do so was recognized. It was his lawful privilege. The department might rule his publication out of the second class, and make it third-class, but while it was of the second class and mailed by the publisher and from the office of publication, it was entitled to transmission in the mails without limit at a cent a pound.

Mr. AUSTIN. Now, there is where you conflict with this decision

Mr. MADDEN. I do not think I do; I think I will make that clear.

Mr. MCCOY. I do not think there is any conflict.

Mr. MADDEN. There is no limitation on the number of sample copies that may be transmitted through the mail, but if the number becomes so great, that other provision of the law may be effective; that is, it will show that the publication was primarily intended for free circulation or advertising purposes, and may be put out altogether.

Mr. McCoy. In other words, the department made a rule of evidence, which this case of *Conant v. Payne* upheld; that is, that it was reasonable to presume that if there were more sample copies than regular subscriptions, it was intended primarily for advertising purposes.

Mr. BRITT. I do not think the rule of evidence could go as far as Mr. Madden contends—

Mr. McCoy (interposing). That is a matter of argument. What I wanted to get at was what this case decided.

Mr. MADDEN. Now, it was this office ruling of the Third Assistant, this administrative device, misconstrued and misapplied, that was written into these indictments as a "form of the statute in such case made and provided." But there was still another question—that of evidence. If the statute were really in such form, there must be evidence of its violation. The question then was, Was the limit in truth exceeded in the mailings of the *Woman's Magazine* and *Woman's Farm Journal*? It would be necessary to show that to be true, in order to establish that a crime had been committed under this alleged "form of the statute."

It will later be shown that, as a matter of truth, the rule of limitation was not violated by either of those magazines; that is to say, no copies in excess of the limit were mailed as alleged in the postmaster's letter in Inspector Fulton's personal letter to the chief post-office inspector, and in those indictments.

We return now to the letter of the Postmaster General, dated March 22. He directs that the postmaster at St. Louis be informed of the amount of postage which should be collected upon copies of those magazines, "assuming as the basis" of the "instruction to the postmaster that the number of copies of each publication charged by him as having been mailed in excess of that authorized by law is correct."

The Third Assistant could not be mistaken as to what was wanted. But as prepared, the ruling would have disclosed the fraud in the indictments—that is, as to the "form of the statute."

Mr. ALEXANDER. In other words, they were going to give that rule the effect of law, while there was no statute to that effect?

Mr. McCoy. I can not see myself how that administrative rule had anything to do with the indictment.

Mr. MADDEN. It did not, but they put it in the indictment. That is just the complaint, that they wrote that administrative rule into that indictment.

Mr. McCoy. I do not believe that it will be necessary for you to argue the proposition that there could not be any indictment for crime based on a violation of an administrative order. If that is what you are arguing, I think that is unnecessary. I do not believe for a moment that the committee would hold against you on that proposition.

Mr. BRITT. That could not be done.

Mr. McCoy. Now, you are on record as saying that an indictment could not be based on an administrative regulation of the department.

Mr. BRITT. Certainly. If it was attempted, it was not well founded.

Mr. MADDEN. It was, however, as directed, submitted to the Postmaster General "before transmission." It came back edited.

That part of it which would have defeated the purpose in St. Louis was eliminated. The Postmaster General required that it be rewritten as edited. That was done, and the letter was forwarded as edited, March 30, 1906.

This editing of the ruling to make it supply the needs of the attorneys in St. Louis, because the postal laws were found to be silent on that direct proposition, was under the advice of the Assistant Attorney General for the Post Office Department, who has been named as one of the conspirators in the case. As the procedure shows, it was all important that the Third Assistant, "the proper officer of the department," should make this ruling. Then on the face of the record, the case would appear to be handled "along the usual lines pursued by your bureau."

A compared copy of the ruling of the Third Assistant as originally prepared, March 27, 1906, a compared copy of the same ruling as edited by the Postmaster General under the advice of the Assistant Attorney General for the Post Office Department, dated March 30, and a compared copy of the "memorandum" of the Assistant Attorney General for the Post Office Department, advising the Postmaster General what to eliminate from the ruling, are submitted herewith in one, marked "Exhibit No. 18."

EXHIBIT No. 18.

[Rewritten by direction of Postmaster-General, omitting clause in parentheses.]

MARCH 27, 1906.

POSTMASTER, *St. Louis, Mo.*

SIR: Your letter of March 15, in which you call attention to a letter dated November 11, 1905, to which you received no answer, is received.

You are informed that your letter of November 11 was referred to the Postmaster General for his consideration. No action was, therefore, taken by this office.

In response to the inquiry contained in your letter of March 15, respecting the postage which should be collected on 300,727 copies of the October, 1905, issue of the *Woman's Farm Journal*, aggregating in weight 65,784 pounds, withheld from transmission by you as being in excess of the number of copies which the publishers are legally entitled to transmit at the pound rate of postage, and 539,308 copies of the November, 1905, issue of the *Woman's Magazine*, aggregating in weight 107,682 pounds, stated to be in like manner in excess of the number of copies which the publishers are entitled to transmit at the pound rate, you are informed as follows:

Assuming, as matter of fact, that the copies withheld from transmission in the one case and mailed in excess in the other, are copies in excess of the number which the publishers are entitled to mail at the pound rate of postage, as stated in your letter, then (unless such excess is great enough to establish that the publication is "designed primarily for advertising purposes or for free circulation or for circulation at nominal rates," and thus exclude the publication from the second class altogether, a matter which can be determined only after a hearing before this bureau under the act of March 3, 1901—ch. 851, 31 St. L., 1107, sec. 444, P. L. and R.) such excess copies are chargeable at the rate of 1 cent for each 4 ounces or fraction thereof, prepaid by stamps affixed.

Respectfully,

EDWIN C. MADDEN,
Third Assistant Postmaster General.

MARCH 30, 1906.

POSTMASTER, *St. Louis, Mo.*

SIR: Your letter of March 15, in which you call attention to a letter dated November 11, 1905, to which you received no answer, is received.

You are informed that your letter of November 11 was referred to the Postmaster General for his consideration. No action was therefore taken by this office.

In response to the inquiry contained in your letter of March 15, respecting the postage which should be collected on 300,727 copies of the October, 1905, issue of the *Woman's Farm Journal*, aggregating in weight 65,784 pounds, withheld from

transmission by you as being in excess of the number of copies which the publishers are legally entitled to transmit at the pound rate of postage, and 539,308 copies of the November, 1905, issue of the Woman's Magazine, aggregating in weight 107,682 pounds, stated to be in like manner in excess of the number of copies which the publishers are entitled to transmit at the pound rate, you are informed as follows:

Assuming, as a matter of fact, that the copies withheld from transmission in the one case and mailed in excess in the other are copies in excess of the number which the publishers are entitled to mail at the pound rate of postage, as stated in your letter, then such excess copies are chargeable at the rate of 1 cent for each 4 ounces or fraction thereof, prepaid by stamps affixed.

Respectfully,

EDWIN C. MADDEN,
Third Assistant Postmaster General.

MEMORANDUM.

MARCH 28, 1906.

There seems to be no reason for the insertion in the letter to the postmaster at St. Louis of the clause in the last paragraph reading as follows:

"unless such excess is great enough to establish that the publication is designed primarily for advertising purposes, or for free circulation, or for circulation at nominal rates, and thus exclude the publication from the second class altogether, a matter which can be determined only after a hearing before this bureau under the act of March 3, 1901 (ch. 851, 31 Stat. L., 1107; sec. 444, P. L. & R.)."

The Woman's Farm Journal and the Woman's Magazine are entitled to transmission in the mails as second-class matter until they shall have been excluded from that privilege after a hearing according to law. There has been no such hearing and no denial to either of those publications of the second-class privilege. The question whether the number of copies of those publications mailed in excess of the number entitled to be mailed at the pound rate of postage is so great as to establish that they are designed primarily for advertising purposes, etc., does not need to be considered in this connection. The only question for consideration here is the amount of postage chargeable upon the copies mailed in excess of the number lawfully entitled to be mailed at the pound rate of postage.

In my judgment the clause quoted should be altogether omitted and the paragraph made to read as follows:

"Assuming, as matter of fact, that the copies withheld from transmission in the one case and mailed in excess in the other are copies in excess of the number which the publishers are entitled to mail at the pound rate of postage, as stated in your letter, then such excess copies are chargeable at the rate of 1 cent for each 4 ounces or fraction thereof, prepaid by stamps affixed."

R. P. GOODWIN,
Assistant Attorney General for the Post Office Department.

A brief personal explanation is called for here. I was Third Assistant Postmaster General when the letter of instruction to the St. Louis postmaster, dated March 27, 1906, came back edited. My impulse was to resign, but there were many reasons why I should not. For one, if I had done so, it might have been possible for the officials to in some manner blacken my name in connection with this case, for I had been regarded by them as an obstructionist from the beginning. As the record will finally show, I made several attempts to have the case taken out of my hands altogether. But it was conceived to be all important for the purposes of the officials to have "the proper officer of the department" act. If I had resigned, it would have been impossible for me to have obtained copies of the complete record, from the first to the last. My thought was that if it came to an actual trial of Lewis and the others on those fraudulent indictments, and this doctored ruling of mine were made use of, I would do my duty as a citizen and go to St. Louis and testify. It was my remaining in the service that made it possible for me to lay before this committee the indisputable evidence of the conspiracy which I have charged existed.

Mr. AUSTIN. Have you concluded your personal statement?

Mr. MADDEN. Yes, sir.

Mr. AUSTIN. While you were in the department as Third Assistant Postmaster General you secured copies of the records bearing on this case, and then, when you left the department, you entered the employ of this concern?

Mr. MADDEN. I desire to make a personal explanation of that.

Mr. MCCOY. You have already made a statement as to going to some attorney here for advice as to that employment.

Mr. BRITT. But not as to obtaining copies of the record.

Mr. AUSTIN. You obtained copies of these official records as an employee of the Government, and then, after leaving the service of the Government, you took these records and secured this employment against the Government?

Mr. MCCOY. You have already explained in the record as to going to a certain attorney here, and now you can state anything you like in reference to obtaining copies of these records.

Mr. MADDEN. I should say in October, 1905—I will fix the date definitely, it was October 14, 1905—when that letter was sent to the Postmaster General containing the Lewis letter, I was of the opinion that the Postmaster General was honestly mistaken in his conduct. I had several times sought to have interviews with him, and had some interviews with him, but I never got anything definite out of him. He always listened to what I had to say, when he permitted me to talk on the subject at all, and would then say, "I will advise you later," and then later I would get a letter, which I knew very well was not written by the Postmaster General himself. He turned the case back to me to be handled along the usual lines on July 12, 1905, and, assuming that he was honest in that, I prepared to handle it along the usual lines. There were a number of things occurring on the side in this case which created a great deal of suspicion, and it was generally understood in my office—I presume they would testify to that effect—and my own employees questioned the propriety of what the Postmaster General was doing and could not understand it. Now, when Lewis wrote, on October 12, complaining of the inspectors again, I became convinced that they did not intend to deal squarely with the Lewis Publishing Co. It is immaterial with me about Lewis.

Mr. MCCOY. Did you know Mr. Lewis before this occurred?

Mr. MADDEN. Only at his appearance before the department. I had never seen him except then.

Mr. MCCOY. What State were you appointed from?

Mr. MADDEN. From Michigan. I then called my special assistant attorney into consultation—

Mr. MCCOY (interposing). Who was your special assistant attorney?

Mr. MADDEN. Henry H. Glassie.

Mr. MCCOY. Where is he now?

Mr. MADDEN. Here in Washington. We consulted on the matter at length. He was my constant adviser. Later, I talked to a number of other people, among them an employee of the House of Representatives, and I looked up cases for my own information. I found that it was a practice, and a proper one, wherever an official deemed it proper for the preservation of his own official record and good name, that he was entitled to a copy of the record with which he

had to do, for the purpose of preserving his good name, especially when he was suspicious of something improper being done. I found that to be the practice in a good many cases.

Mr. AUSTIN. Can you cite a single case in which that was done?

Mr. MADDEN. There was a case right here—the Binger Hermann case, where he burned up records, and the court acquitted him as to the propriety of the act.

Mr. BRITT. Did I understand you to say that the special counsel to your bureau advised you that you had a right to remove any of these letters or copies or to take copies from the record?

Mr. MADDEN. Yes, sir; I am very positive that Mr. Glassie did so.

Mr. BRITT. Did he ever make the suggestion that there was a statutory provision making that act an offense?

Mr. MADDEN. No, sir; there is not.

Mr. BRITT. He never did?

Mr. MADDEN. No, sir; there is not. There is a statute making it an offense to remove official records, but it does not interfere with copying.

The CHAIRMAN. If there is no suggestion in this case that there has been any perjury, I do not see that we need to determine the status of the matter.

Mr. MADDEN. I just want to say one more thing, to complete it. Thereupon I instructed my private secretary and chief clerk to make an extra carbon copy for me of all the letters that I wrote or signed in connection with this case, or that had come to me. That accounts for my possession of the records. I intended to hold these for the preservation of my good name, if anything came up; precisely as I questioned the propriety of my accepting compensation from Lewis when he proposed it, and went to Mr. Darlington, and asked him, and he said that it was a perfectly proper thing for me to accept the compensation, but that it was not a good thing to do, because it gave the officials an opportunity to question the matter, so that I accepted no compensation, but did assist the Lewis Publishing Co. without compensation, and later, when Mr. Allen reviewed the matter and reported upon it, I accepted it.

Mr. BRITT. That is all in the record?

Mr. MADDEN. Yes; that is all in the record. That is how I came by the records.

Mr. AUSTIN. You speak about suspicion in this case against the then Postmaster General, Mr. Cortelyou?

Mr. MADDEN. Yes; I do.

Mr. AUSTIN. Mr. Cortelyou directed you, as your superior officer, to make a special investigation?

Mr. MADDEN. Yes.

Mr. AUSTIN. And you did not do it?

Mr. MADDEN. I did do it.

Mr. AUSTIN. There is one part of it that you did decline to make?

Mr. MADDEN. I did not decline.

Mr. AUSTIN. There is one part of it that you did not make; you admitted it this morning.

Mr. MADDEN. I challenge you to produce the record showing that I declined.

Mr. AUSTIN. April 14, 1906——

Mr. MCCOY. May I make a suggestion there?

Mr. AUSTIN. Yes.

Mr. McCoy. We determined, as a matter of procedure, that Mr. Britt having made certain statements and Mr. Madden having taken issue with him, it all stands on the record, and later the Government will undertake to prove that he did violate orders, and then afterwards Mr. Madden can produce the facts which he claims show that he did not. That will be the more orderly procedure.

Mr. AUSTIN. All right.

Mr. McCoy. I do not mean that you shall not do it.

Mr. AUSTIN. I understand.

The CHAIRMAN. I suppose that is a part of the Government's case?

Mr. AUSTIN. Yes.

The CHAIRMAN. In other words, we presume that the Government will be well represented, and that anything it wants to get in will come in. That is what we are looking for.

Mr. BRITT. We will do the best we can.

Mr. MADDEN. May I add one sentence more about these records? As a citizen of the United States I protest and deny the right of any department of the Government to conceal its acts by means of denying its records. I say that the Post Office Department is a public institution, and its work should be as an open book, and it ought not to deny its records, or copies of them, to any person, especially where it will disclose a wrong.

Mr. AUSTIN. Nobody is making that contention on the part of the Government. What I was challenging was your right to take from the office copies of records.

Mr. MADDEN. I claim that right.

Mr. AUSTIN. And I deny the right of any Government official to do it.

Mr. MADDEN. I claim that right, and I claim it is the right of any man to treat it as a right.

Mr. AUSTIN. And it is doubly wrong for a man to do it and then be found afterwards in the employ of the man that the Government has a charge against.

Mr. MADDEN. I did it as a public duty, and to disclose a great crime, and I will disclose it before I am through.

Mr. AUSTIN. A court is a good place to do it.

Mr. MADDEN. Later on, April 6, 1906, the St. Louis postmaster made a demand upon the publishing company for excess postage on the mailings of the Woman's Magazine and Woman's Farm Journal, then taking place or about to take place. The company alleged that it did not violate the rule of limitation. The amount of the excess postage was deposited in money, and an appeal taken from the postmaster's ruling.

The appeal was addressed to the Hon. Jesse Overstreet, Member of Congress and chairman of the Post Office Committee, House of Representatives. The company had been unable to get replies to its correspondence addressed to the Third Assistant, because he had been forwarding the letters to the Postmaster General, who had for the most part not replied either. Mr. Overstreet sent the appeal to the Postmaster General. He sent it to the Third Assistant, with the letter dated April 14, 1906. A compared copy of this letter is submitted, marked "Exhibit No. 19."

EXHIBIT No. 19.

APRIL 14, 1906.

SIR: The letter of E. H. Lewis and the accompanying statement of the Lewis Publishing Co., both of which are dated April 7 and inclosed herewith, have been transmitted to the Post Office Department by Hon. Jesse Overstreet, Member of Congress, to whom they are addressed.

It will be seen that in his letter Mr. Lewis complains that the postmaster at St. Louis has required the Lewis Publishing Co. to deposit with him an amount sufficient to cover the postage on copies of its publication entitled *Woman's Farm Journal*, which he believes to have been mailed in excess of the number legally mailable at the pound rate, and as president of that company asks to be accorded a hearing upon the issue raised by the action of the postmaster.

You will please immediately institute an investigation for the purpose of determining whether the *Woman's Farm Journal* and the *Woman's Magazine*, issued by the Lewis Publishing Co., are entitled to second-class privileges, and if so, what number of copies of each publication should be admitted to the mails monthly at the rate of 1 cent per pound. This investigation should be thorough and comprehensive, and in pursuance of it the company should be afforded early opportunity to be fully heard upon the questions involved.

Very respectfully,

GEO. B. CORTELYOU, *Postmaster General*.

Hon. E. C. MADDEN,
Third Assistant Postmaster General.

Inclosures.

In this letter of April 14, the Postmaster General says:

It will be seen that in his letter Mr. Lewis complains that the postmaster at St. Louis has required the Lewis Publishing Co. to deposit with him an amount sufficient to cover the postage on copies of its publication entitled "*Woman's Farm Journal*," which he believes to have been mailed in excess of the number legally mailable at the pound rate, and as president of that company, asks to be accorded a hearing upon the issue raised by the action of the postmaster.

You will please immediately institute an investigation for the purpose of determining whether the *Woman's Farm Journal* and the *Woman's Magazine*, issued by the Lewis Publishing Co., are entitled to second-class privileges, and if so, what number of copies of each publication should be admitted to the mails monthly at the rate of 1 cent per pound. This investigation should be thorough and comprehensive, and in pursuance of it the company should be afforded early opportunity to be fully heard upon the questions involved.

Here it seems important to state another reason why those indictments were not in good faith and fraudulent. As previously stated, Circular XXV (a copy in exhibit) issued by the Third Assistant Postmaster General, December 16, 1905, allowed publishers until April 1 of the following year to bring their publications into compliance with its terms or requirements. The effect of this circular was to supersede and suspend all previous rules on the subject, including the rule of limitation upon sample copies. This circular and the suspension it provided for, applied to the entire publishing industry. The Third Assistant then ceased to take notice for the time being of violation of previous rules.

This circumstance, even though the "form of the statute" were as alleged in the indictments, made it an immoral and unlawful act to indict the officers of the Lewis Publishing Co., because what is an offense in one must be an offense in another, but these indictments proposed to punish those men for violation of a limitation, which had been suspended for a time as to every other publisher.

The foregoing explanation is made because when the investigation of the Third Assistant, ordered April 14, 1906, by the Postmaster General, was under way to determine whether the *Woman's Magazine*

and Woman's Farm Journal, being mailed on and after April 6, six days after the circular took effect, were violating the limitation, the Postmaster General later directed that the investigation be extended back to include the issues of those magazines covered by the indictments.

That is a very important matter, as to what will appear later.

It will be noticed that because of this extending backward the decision of the Third Assistant, "the proper officer of the department," upon the mailings of those issues would be the making or unmaking, as the case might be, of evidence to prosecute under the indictments.

It has just been explained that when the inspectors found, after the return of the indictment, that the postal laws were "silent on that direct proposition" and showed "what the attorneys will need" to make up for the deficiency of the law, how a doctored ruling was sent forward. Now, later, when the Third Assistant's commission reported that a count of the subscriptions for the Woman's Magazine and Woman's Farm Journal showed no excess mailings at all and the Third Assistant so ruled, leaving the indictments without evidence, the Postmaster General brought extraordinary pressure upon him to reverse his ruling and find to the contrary, regardless of the facts found by the commission's count.

Returning now to the direct line of the case, the publishing company was, under the instructions of the Postmaster General's letter of April 14, informed on April 19 that it would be accorded a hearing by the Third Assistant on its appeal from the St. Louis postmaster's ruling as to excess copies. The date agreed upon was April 30.

On the same day (Apr. 19) the Third Assistant, in pursuance of the duty of determining the question of excess mailings, called upon the chief post office inspector and the postmaster at St. Louis to send to him for consideration the evidence in their possession which tended to show excess mailings of the Woman's Magazine and Woman's Farm Journal.

Both the chief post office inspector and the St. Louis postmaster replied under date of April 23.

Gentlemen, this is a long letter, but I think it is very interesting.

Mr. AUSTIN. I suggest that we take a recess. It is now nearly 12 o'clock.

(At 11.47 o'clock a. m., the committee took a recess until 2 o'clock p. m.)

AFTERNOON SESSION.

The committee met pursuant to taking a recess.

STATEMENT OF MR. EDWIN C. MADDEN—Continued.

Mr. ALEXANDER. You may proceed, Mr. Madden.

Mr. MADDEN. Just prior to the adjournment for lunch, the propriety of my connection with this case was referred to.

I desire to say, in justice to myself as well as the clients whom I represent, that it was only after my suspicions were aroused that I requested my clerks to make extra carbon copies of certain letters, written and received by me relating to this case, which I deemed it important for me to have in the event that I might some day be

called upon to explain my conduct in connection with the handling of the case. To illustrate the protection afforded by copies of letters in perfectly proper cases, such as the one now being presented, I will add that this was done by me in another instance while I was Third Assistant Postmaster General, which resulted in my securing a judgment for libel, which I would have been utterly helpless to successfully prosecute were it not for the fact that I had in my possession carbon copies of letters bearing upon the case. In both of these instances these copies were made in the interest of substantial justice to me as a public servant.

Moreover, I desire to add that the issues involved in this case are not determinable upon the particular attorney who happens to present it, but rather upon its own intrinsic merits, the truth and the evidence submitted in support of the allegations in the bill of complaint. I may say, moreover, that had an attorney been retained by the Lewis Publishing Co. to present this case, who did not have my experience in the postal service, such an attorney would undoubtedly have found it impossible to properly represent the company and substantiate the charges in the bill without the copies of the letters made out of an abundance of caution when my suspicions were aroused. The effect of this would have been that thousands of citizens who had been grossly wronged by the officials of the Government could not have secured the justice to which they are entitled.

During my term of office I naturally absorbed the impression that obtained in my office of Third Assistant Postmaster General that Mr. E. G. Lewis was a schemer and withal an undesirable citizen, and I retained that impression until I subsequently visited University City, where the Lewis Publishing Co. is located, and investigated the entire situation and personally met and conversed with many of the prominent persons associated with him in the enterprises with which he is identified, including both business and professional men of unquestionable integrity and standing.

One more thought: By way of explanation of my mission here, allow me to say that I am not here in the interest of Mr. E. G. Lewis, personally, but in behalf of the 18,000 stockholders of the Lewis Publishing Co., who have suffered great loss as a result of the consummation of the conspiracy charged in the bill of complaint, and it is by virtue of a resolution of the board of directors of that company that I appear before you in response to the call issued by your honorable body to lay before you the facts upon which the allegations in the bill of complaint are based.

I submit in this connection copy of a communication from the board of directors to me. It is the second such commission, but I had them issue it anew.

(The communication referred to by Mr. Madden follows:)

UNIVERSITY CITY, ST. LOUIS, MO., June 20, 1911.

Gen. EDWIN C. MADDEN,

Building.

DEAR SIR: Referring to previous correspondence in connection with the case of the Lewis Publishing Co., which is now to be investigated by the House of Representatives at Washington through its appropriate Committee on Expenditures in the Post Office Department, I have to advise you of the adoption of the following resolution by the board of directors of the Lewis Publishing Co. on June 14, 1911.

The following is a true copy thereof:

"Whereas the House of Representatives at Washington through its Committee on Expenditures in the Post Office Department, has notified the Lewis Publishing Co. of an investigation to be conducted by it and has called upon the company for a statement of complaints against the postal administration:

"*Therefore be it resolved*, That Edwin C. Madden of St. Louis, be appointed to represent the Lewis Publishing Co. at and during this investigation, and to draft and present on behalf of the company its complaints against the postal administration, and that he be constituted and appointed the attorney in fact for the Lewis Publishing Co. with power to act to all intents and purposes in connection with all matters pertaining to this investigation as the Lewis Publishing Co. could do through its officers or otherwise; and that all obligations created by the said Edwin C. Madden on behalf of the Lewis Publishing Co. in the furtherance of the objects and purposes of this attorneyship shall have the same force and effect as if those acts were done by the Lewis Publishing Co. through its regularly constituted officers or otherwise, and all of these acts of Edwin C. Madden are hereby ratified and confirmed by this board of directors."

Yours, very truly,

H. H. PERKINS, *Secretary*.

Mr. MADDEN. I desire to place in the record also a statement that on November 14, 1910, for the purposes of the administration of justice in a libel case by the Lewis enterprises *v. R. M. Fulton and Russell P. Goodwin*, two of the persons involved in this case, the attorney for the company came to Washington and secured a subpoena duces tecum upon the Postmaster General to produce papers for the purposes of administering justice. I submit the reply of the Acting Postmaster General to that subpoena, denying the papers and stating that:

In any event, under the practice of the department, such papers have always been regarded as confidential and privileged and for official use exclusively.

To which doctrine I do not subscribe as an American citizen.

(The letter referred to by Mr. Madden follows:)

POST OFFICE DEPARTMENT, UNITED STATES OF AMERICA,
OFFICE OF THE POSTMASTER GENERAL,
Washington, D. C., November 14, 1910.

Messrs. BARCLAY, FAUNTLEROY & CULLEN,
Attorneys for Peoples United States Bank, St. Louis, Mo.

GENTLEMEN: Referring to your communication dated at Washington, D. C., November 14, 1910, requesting Charles P. Grandfield, as Acting Postmaster General, to produce certain papers alleged to be material and pertinent to the issues in the case of the Peoples United States Bank *v. Russell P. Goodwin and Robert M. Fulton*, I have to state that it is not known whether the papers enumerated in your memorandum are on file at the department, but in any event, under the practice of the department, such papers have always been regarded as confidential and privileged and for official use exclusively.

Under these circumstances it will be impracticable to furnish them for use in a civil suit.

Respectfully,

C. P. GRANDFIELD,
Acting Postmaster General.

Mr. BRITT. Do I understand that in the case of no public document it would be different?

Mr. MADDEN. I understand, at least my belief is, that outside of the State, War, and Navy Departments you have no right to conceal from the public any public transaction.

Mr. AUSTIN. You have stated that you do not appear here as the personal representative of Mr. Lewis?

Mr. MADDEN. Yes, sir.

Mr. AUSTIN. Whom do you represent here?

Mr. MADDEN. The Lewis Publishing Co. Mr. Lewis is simply one of the company.

Mr. AUSTIN. The controversy has been all along and is now with the Lewis Publishing Co., which you represent at this time?

Mr. MADDEN. Yes, sir; that is right.

Mr. AUSTIN. You stated that you became suspicious, and as a result of your suspicions you used the Government force to make copies of all of the records of the Post Office Department bearing on this case?

Mr. MADDEN. I deny that in this statement.

Mr. AUSTIN. What?

Mr. MADDEN. When my suspicions were aroused thoroughly I directed my clerks—

Mr. AUSTIN (interposing). You mean the Government clerks?

Mr. MADDEN. Yes, sir; to make a carbon copy for my purposes.

Mr. AUSTIN. You became suspicious and you thought you would need them in your own defense?

Mr. MADDEN. Yes, sir.

Mr. AUSTIN. But you are using them in the defense of this company?

Mr. MADDEN. In the administration of justice.

Mr. AUSTIN. You are using them in the defense and as the paid attorney of this concern that has had a controversy with the department?

Mr. MADDEN. Yes, sir; and properly so.

Mr. AUSTIN. You say that you had a right to take that information, as a paid official of the Government, long in the service, and make copies of it and after leaving the service taking that information to these men and accepting a fee from them and using that information furnished to you by Government employees on Government pay in this case?

Mr. MADDEN. I certainly do.

Mr. AUSTIN. You think that is proper?

Mr. MADDEN. Eminently proper.

At the point I broke off I was just about to read the letter of April 23, 1906, from the postmaster at St. Louis to the Third Assistant Postmaster General:

I am in receipt of your letter of the 19th instant, quoting largely from my letter to you of the 11th instant, informing me of an intended hearing in the matter of the Lewis Publishing Co. on the 27th instant at Washington (this date was later changed to April 30), and requesting me to present the evidence I have, or copies thereof, before that date.

In reply I beg leave to state that your request will be complied with so far as it is practicable to do so.

Before narrating all the facts, however, permit me to express my regret that you have not seen fit to comply with my request of the 11th instant for the papers submitted by Mr. Lewis challenging the correctness of the position taken by this office relative to the legitimacy of the subscription lists to these publications.

Had these papers been brought to my attention, I could submit a more intelligent and a briefer report; without them, it becomes necessary for me to take up a multitude of facts and circumstances and to repeat facts already stated, many of which could doubtless be eliminated were I not blinded as to what particular issues Mr. Lewis has raised in his appeal.

The ramifications are so great and the evidence so intricate and necessary of explanation in many particulars and the time is so short that I do not hesitate to say that I fear that if this is to be the extent to which the Government is to be heard in this appeal its interests will be inadequately represented; especially will this be true if Mr. Lewis

is there in person with his profuse and specious explanations and representations with nobody (acquainted with the facts) there to combat him.

Entering, therefore, upon a recital of the facts, I will state, that in the spring of 1905 an investigation by inspectors was made of the Lewis Publishing Co., and the People's United States Bank, both conducted by E. G. Lewis. From information since obtained, I learned that during the month of May, 1905, as a result of these investigations, revocation of second-class privileges granted the Woman's Magazine and the Woman's Farm Journal (published by E. G. Lewis) was recommended, and that at the same time a fraud order was recommended against the People's United States Bank, E. G. Lewis, its president, and its other officers. In June, 1905, a hearing was granted Mr. Lewis at Washington by the Assistant Attorney General for the Post Office Department on the recommendation of a fraud order against the bank. On the same day a hearing was granted him by your office on the question of the revocation of his second-class privileges. Subsequently the Assistant Attorney General recommended to the Postmaster General that a fraud order be issued. On July 6 the Postmaster General, upon this recommendation, issued the said fraud order against Lewis and his bank, which fraud order is still standing. This bank fraud was promoted and made possible by use of the editorial columns of the Woman's Magazine and Woman's Farm Journal.

On December 1, following, Lewis was indicted for devising a scheme to defraud in connection with the promotion of his bank, and also for conspiracy with other officers of the Lewis Publishing Co. to defraud the United States of large amounts of revenue, resulting from mailing copies of his publications at the pound rate, in excess of the number he was legally entitled to mail. These criminal cases are still pending and will be brought to trial within a month or two. No action, so far as this office is advised, has been taken by you in connection with the recommendation and hearing on the matter of revoking Lewis's second-class privilege.

Since the fraud order was made effective, Lewis has vilified and maligned every officer in any way connected with the issuance of the fraud order against him, from the head of the department down, including the judge of the United States court, and has placed all of them in the category of thieves, conspirators, dishonest officials, dupes, or incompetents—

Note this, gentlemen—

In letters signed by Lewis and in articles published regularly in his publications since the fraud order was made effective (all of which are teeming with anarchistic statements and charges of official corruption), your name alone as an official has received favorable comment. The effect of this on thousands of his credulous readers is appalling, as is evidenced by the fact that not only I as postmaster, but other officials of the department here in St. Louis, have received many letters of vituperative condemnation for the course we have pursued in our efforts to protect the revenues of the Government.

About September 1 last information reached me that Mr. Lewis was systematically mailing his publications to "actual subscribers" in distinguishing wrappers—

If you remember back in the letter of October 14 to the Postmaster General, which quoted Lewis's letter, Lewis complained of a hired spy being gotten into his establishment. I do not know what connection that has with this—

My employees were instructed to make a proper separation and notation of the September mailings of the Woman's Farm Journal and the September mailing of the October issue of the Woman's Magazine. These tests confirmed the information received as to the distinguishing wrappers. Beginning with the date of October 5, 1905, the mailings of the Woman's Farm Journal were again weighed and tested with the same confirmatory results. On October 13, 54 clerks from this office were detailed by me to visit the Lewis Publishing Co.'s plant and call for and count their subscription lists. This was done in conjunction with the inspectors who are working on the case. All of the card records bearing names of subscribers were called for from Mr. Lewis, and when the count was completed the number of actual current subscribers to the Woman's Farm Journal was found to be 141,328, and to the Woman's Magazine, 539,901.

In the meantime the matter had been presented to the United States attorney for this district, who advised the holding of all the illegitimate mailings of the October Woman's Farm Journal as evidence in the criminal case to be instituted by him.

Attempts to test the October mailings of the November issue of the Woman's Magazine by distinguished wrappers were thwarted by Lewis's action in changing the sys-

tem of wrapping, after our count of his subscription lists, and after his learning that the distinguishing system of wrappers had been discovered by us; but a test made from names selected systematically from his mailings of this issue of the Woman's Magazine showed the percentage of illegitimate mailings to be practically the same as was found by the distinguishing system of wrappers used the month previous. Since that time, both publications have been mailed without system as to distinguishing wrappers and with every apparent effort on Mr. Lewis's part to prevent the department, if possible, from gathering further facts as to the exact number of his illegitimate mailings.

We have complained about the zealous inquiries and this refers to it.

We have continued since that date testing his mailings by inquiries through postmasters as to addresses shown on his publications, with the result that not to exceed 55 per cent of those mailed by Lewis as legitimate subscribers (not marked samples) are legitimate subscribers to the Woman's Magazine, and not to exceed 56 per cent are legitimate subscribers to the Woman's Farm Journal. These are general averages arrived at from the full five months' tests since the count.

Five months that inquiry among the subscribers was going on.

From the tests made and evidence in our possession, it is shown that prior to the date of our count, Lewis was padding his mailing lists, by the use of names purchased for sample-copy purposes, and not by the use of expired subscriptions. After the count Lewis resorted largely to the use for padding purposes, of his expired subscription lists covering a period ranging from one month to three years, of a number about equal to his actual list, as shown by his subscription card records, not abandoning entirely the use of purchased sample-copy names. His attempt to legalize expired subscriptions, was made in face of standing notices carried in both of his publications reading as follows:

"Discontinuances: Subscribers wishing the Woman's Magazine stopped at the expiration of their subscriptions need not notify us to that effect. We consider it their wish to have it discontinued if they do not renew promptly when notified that the time paid for has expired. * * *

"If you find this paragraph marked, it means that your time is out, and that we will stop sending the magazine if not renewed within 30 days. We do not want to lose you, so please renew at once. * * *

"We discontinue sending papers when time paid for expires, unless renewed within 30 days."

Lewis's alleged "Citizen's Committee," in charge of Mr. L. B. Tebbetts (a director in one of Mr. Lewis's enterprises—the University-Heights Realty Co.)—lays claim to the legitimacy of expired subscriptions under the amendment to section 436, Postal Laws, promulgated December 16, 1905, by your office, with this exception: Their count and the count made by this office are practically alike.

As bearing on the question of the number of legitimate subscribers to the Woman's Magazine, Lewis made affidavit in this office on October 12, 1905, that he had over 800,000 "paid in advance subscribers." On March 22, 1905, some six months previous, when asked by the inspectors, he states in writing, that he has in cash-paid-in-advance subscribers to the Woman's Magazine over one and one-quarter million, and to the Woman's Farm Journal over half a million. In addition to this, his September mailings of the October issue of the Woman's Magazine (made from September 20 to September 30, 1905), before my count was made, shows that he mailed but 651,155 copies of the Woman's Magazine as regular subscribers, and 464,055 as samples, and that on October 20, just after the count, he mailed of the November issue of the Woman's Magazine as regular subscribers 1,553,425 copies and 96,310 as sample copies—an alleged increase of 903,270 regular subscribers in one month and an alleged decrease of 377,745 sample copies in one month. In face of these indisputable facts, I can not understand why any of his statements or explanations are accepted as truthful, or why he should be given the sufferance of second-class privileges another day.

Possibly I might omit some of this, it is very dry, two or three pages.

Mr. AUSTIN. I expect Mr. McCoy wants to hear it all. He insisted in the beginning that it should be read. Is that the letter of the postmaster at St. Louis?

Mr. MADDEN. Yes, sir.

Mr. AUSTIN. I would like to have the balance of it read. It is getting down now where it is interesting.

Mr. MADDEN. I was saving my strength for what follows.

Mr. AUSTIN. Let him [indicating gentleman sitting to the right of Mr. Madden] read it.

Mr. MADDEN. I have plenty of strength.

Mr. AUSTIN. If you had not started in, it would be all right, but I want to hear it all.

Mr. MADDEN. It is simply detail and that is the reason I wanted to skip it.

Mr. AUSTIN. This is the first letter?

Mr. MADDEN. No.

Mr. AUSTIN. The second letter?

Mr. MADDEN. The third or fourth letter.

Mr. AUSTIN. The first letter you have read from the postmaster?

Mr. MADDEN. If you will permit me, I will explain. The previous letter that he had written to the Third Assistant Postmaster General had been transmitted to the Postmaster General and the Postmaster General had remained silent. On April 14, 1906, the Postmaster General sent the matter to the Third Assistant Postmaster General to decide the question of excess copies and the right of the publication to the second-class privileges. Thereupon the Third Assistant Postmaster General called upon the postmaster for his evidence, and instead of getting the evidence he got this long letter.

Mr. AUSTIN. Let us have the balance of that letter.

Mr. MADDEN (reading):

Returning to the number granted Mr. Lewis by this office as legitimate subscribers, it should be stated, that under what appears to be the proper construction of the postal laws and the recent amendment of your office, a large proportion of this number are not legitimate subscribers according to this ruling. Mr. Lowenstein (who with Mr. Walter B. Stevens, had charge of the count of Lewis's subscriptions, made by the alleged "Citizens' Committee"), admitted to us, that of the subscriptions counted, the class contained the largest number of subscribers was the "Five Cent Clubs;" the next largest, "Single Subscriptions;" and the next largest, "Six Cent Clubs" or "Renewals." From this it will be seen that, by the reduction made by Lewis from the already nominal subscription price, these subscriptions are illegitimate. Further, as stated in my letter of the 11th instant, this number is unquestionably made up to a considerable extent of subscriptions obtained in contravention of the different rulings of your office. In one instance, practically 1,000 subscriptions were sent in by a dealer in "face and tooth powder" for advertising purposes; the rate of subscription paid was 5 cents per annum. Another case is where over 600 subscriptions were obtained since January 1, 1906, by so-called "clubbing arrangements with another newspaper," by which the Woman's Magazine is practically being sent gratis as a premium, the nominal rate of 5 cents per annum being charged. The entire list of these names and addresses is now in the hands of the prosecuting officers. Another illustrative case is where a medicine company in a southern city advertised to send "free" the Woman's Magazine for one year for two cartons (or outside wrappers) taken from 50-cent bottles of medicinal preparations; upon investigation it developed that in return for advertising in the Woman's Magazine Lewis supplied this company with 400 yearly subscriptions to the Woman's Magazine free, the list of names being supplied by the drug company.

In addition to this some 200,000 names, taken from the sample lists, have been added by Lewis to his legitimate subscription lists, of persons who have never sought and paid for the publication. This has been done under the pretense that their subscription was paid out of a "special fund" donated by Lewis's friends, the names to be selected by Lewis. but even under this arrangement it is in evidence that the addresses did not receive the publications continuously or in consecutive months—in other words, the lists under this arrangement were changed monthly. These facts are all supported by evidence now in the hands of the prosecuting officer of the Government.

On the facts above outlined, and on other facts, all of which can be corroborated by evidence now in the hands of the prosecuting officer of the Government, my action was based in demanding of Mr. Lewis additional postage on his publications and my recommending to the department the revocation of his second-class privileges on both publications, which recommendation I now desire to decidedly renew.

"As a result of the second persecution" it says here; I guess it means prosecution; no, presentation is what is meant.

Mr. AUSTIN. You prepared it and I suppose you put in persecution.

Mr. MADDEN. Possibly. Apparently "presentation" should be the word.

As a result of the second presentation of the Lewis case to the grand jury this week, and the continuous need of this evidence by the United States attorney and the inspectors in the preparation and conduct of the criminal case against Lewis, and because the prosecuting officers have expressed the inadvisability of forwarding the evidence or copies thereof at this time, and object to it, I regret to state that I find it impracticable to comply with your request to transmit the documentary evidence in this case.

In conclusion, permit me to state, that I have not acted in the premises named without full realization of my responsibilities, and am not insensible to the criticism and abuse which on the part of Lewis and his friends, has followed such action and which will continue so to do. As postmaster, however, I find it my duty to so act in order that the revenues of the Government, already subjected to frauds perpetrated to the extent of some \$75,000 to \$100,000 in the past two years, might not be further defrauded to the extent of about \$8,000 per month, and it is my intention to continue the performance of this duty faithfully and fearlessly. In doing so it is my earnest hope that the officers at the head of the bureau having jurisdiction over these abuses, and having the power to stop them, will give me the loyal and effective support that is due a postmaster under such circumstances.

I desire to again express it as my conviction that not only should the additional postage collected from Mr. Lewis be retained by the Government, but that the second-class privilege granted the Woman's Magazine and the Woman's Farm Journal should be immediately revoked, because of the unquestionable illegitimacy of his subscription lists, and his gross abuse of second-class privileges in the use of these publications primarily for advertising purposes.

Mr. AUSTIN. Is that the end of the letter?

Mr. MADDEN. Yes, sir.

Mr. AUSTIN. Please give me the name of the postmaster.

Mr. MADDEN. Frank Wyman. His name does not appear. I did not think it needed to appear.

Mr. AUSTIN. I was looking over this document and I thought Mr. Blodgett was the postmaster at that time.

Mr. MADDEN. No; he was the district attorney.

Mr. AUSTIN. Mr. Wyman was the postmaster during this entire time?

Mr. MADDEN. Yes, sir.

One of the reasons for reading this remarkable letter in its entirety is that its tone and spirit may be observed. One can scarcely fail to be impressed that they are not those of a subordinate addressing his superior. For the sake of form, a proceeding "along the usual lines," it is transmitted over the signature of the St. Louis postmaster; but if a report, later to be placed in the record, be true, neither the St. Louis postmaster nor any of his subordinates wrote this letter. It was written for him by Inspector Fulton, the special representative of the Postmaster General. To this letter the Third Assistant replied under date of April 27, 1906.

Mr. BRITT. You have made a number of references to letters signed by some and written by others. I will ask you if the signature to a letter is not its full legal ratification and an assumption of responsibility for it?

Mr. MADDEN. Yes, sir.

Mr. BRITT. It assumes that the signer knows its contents and becomes responsible for it?

Mr. MADDEN. Yes, sir.

Mr. BRITT. Then the matter of indictment in the letter is not of consequence?

Mr. MADDEN. It is of consequence only when the Postmaster General, sitting in Washington, is using his agent in St. Louis to bring about an offense by the Third Assistant Postmaster General.

Mr. BRITT. If that is a fact, it is important. You have made the assertion up to this time a great many times and probably you will adduce proof of the fact.

Mr. MADDEN. I will simply produce the report to the Postmaster General which I have in my possession, a copy of it.

Mr. BRITT. Will that be proof?

Mr. MADDEN. The best I have, and Mr. Wyman never would have written such a letter——

Mr. AUSTIN (interposing). Admit just for the sake of argument that the inspector was the author of the letter, if it states the facts, does it make any difference?

Mr. ALEXANDER. No postmaster would dare to write such a letter to his superior unless he thought there was somebody over him who would protect him?

Mr. MADDEN. No, sir; he would not dare to.

Mr. AUSTIN. If it is a correct statement of the case, I do not see that it cuts any figure who prepared the letter.

Mr. MADDEN. The fact that this letter was signed by the St. Louis postmaster made the reply of the Third Assistant, which follows, possible. Had it come over the inspector's signature, and been transmitted through the Postmaster General's office to the Third Assistant's, the reply, if any were then made, would of necessity have gone back by that route, with the prospect that it would never have gotten beyond the walls of the Postmaster General's office. The letter of the Third Assistant, which follows, was not submitted to the Postmaster General "before transmission."

This letter was addressed to the postmaster, Hon. Frank Wyman, Postmaster, St. Louis. I am very anxious to have you listen to this letter, Mr. McCoy.

Mr. MCCOY. I do not see why I have to pay so much attention.

Mr. AUSTIN. It is an interesting letter.

Mr. MADDEN. I am aware that this is a sleepy proposition.

Mr. AUSTIN. It is not sleepy to me.

Mr. MCCOY. Am I awake or asleep?

Mr. AUSTIN. You are awake; just keep awake.

Mr. MCCOY. As long as I can smoke a cigar I can keep awake.

Mr. MADDEN (reading):

Your letter of April 23, a copy of which was also sent to the Postmaster General, is received.

He advised that he had sent a copy of that letter to the Postmaster General.

This is not a reply to such parts of your letter as are responsive to my letter of the 19th instant calling for information. There are certain portions of your letter, however, not concerned with the merits of the matter to which it relates, which, by reason of their unusual character, require special notice at this time.

You should understand that the second-class mailing privilege of any publication depends upon the facts pertaining to that publication asailable matter, and the circumstance, if true, that a publisher has "vilified and maligned every officer in any manner connected with the issuance of the fraud order against him, from the head of the department down, including the judge of the United States court, and has placed all of them in the category of thieves, conspirators, dishonest officials, dupes, or incompetents," or the circumstance that the statements made by him are anarchistic, or that any one official has not been the object of his displeasure, are matters wholly disconnected from his right to the second-class mailing privilege, and are matters which you should not permit to enter into the consideration which you as an official are required to give the case. If the publisher has libeled you or any other official there is a remedy at law.

It is especially important that an official charged with administering the postal laws and regulations uniformly should, in the discharge of his functions, be entirely unbiased by such circumstances as those upon which you dwell in your letter. Particularly should you endeavor to eliminate from your investigation and report upon the physical facts involved in the inquiry the supposed effect, however appalling in your judgment, of these statements upon the readers of the publication. Neither should you take into consideration as an official the letters of vituperative condemnation which you say you have received. While your protestation that you intend to continue to perform your duty faithfully and fearlessly is commendable, and you will have the support of this bureau whenever your action is just, lawful, and reasonable, you should not, by reason of the criticism and abuse to which you say you have been subjected, put yourself in the frame of mind of one suffering from delusions or persecution, nor should you permit the irritation, which as an individual you may naturally feel on that account, to drive you to imperil the success of administration by overzealous or hysterical measures.

It is my duty to inform you that the cases of the publications mentioned in your letter are now with this bureau. They involve two questions: First, whether the excess mailings alleged by you are, as a matter of fact, excess under the usual rules applicable to all publications; second, the right of the publication, as such, to the second-class mailing privilege.

The facts with respect to the fraud order against the People's United States Bank and the indictment of Mr. E. G. Lewis in connection with the promotion of that bank and for conspiracy to defraud the postal revenues, recited at length in your letter, are matters of which this bureau has already official cognizance and which, in the request for information concerning your ruling as to excess copies, you were not called upon to recount at length. Neither is it your duty to pass judgment upon the extent to which the Government is to be heard in the appeal from your ruling, nor upon the question whether its interests will be adequately represented. Equally superfluous is your statement that "no action, so far as this office is advised, has been taken by you in connection with the recommendation and hearing on the matter of revoking Lewis's second-class privileges." Whether action has been taken by me or not is something which I may be assumed to know, and your statement to that effect in an answer to a letter calling upon you for information can be accounted for only upon the view that you assume to sit in judgment upon the actions of this bureau and to express contempt for them. You must know that conduct of this character will not be tolerated, and that a repetition of it will involve consequences more serious than the rebuke and reprimand which is now administered to you. This reprimand applies equally to other statements in your letter, among them the expression of your surprise that any of Mr. Lewis's statements or explanations are accepted as truthful, or that he should be given the sufferance of second-class privileges another day. The law has not delegated to you the power or authority to pass upon the second-class privilege of any publication, nor, so long as you remain a subordinate officer of this department, are you at liberty to review, or express disapproval of, the decisions of your superiors.

It is unnecessary for the present purpose to refer to further evidence in your letter of the attitude of insubordination in which you place yourself.

It is hoped and expected that hereafter in the management of that part of the public business committed to your care you will confine yourself to the duties which you are called upon to perform, and in doing so will display sanity, moderation, and dignity.

MR. AUSTIN. Is that the end of the letter?

MR. MADDEN. Yes, sir.

MR. AUSTIN. And it could not have been any stronger if you had been the attorney of this company?

Mr. MADDEN. No, sir.

Mr. AUSTIN. In criticism of an official who was attempting to protect the Government?

Mr. MADDEN. If you construe it that way, you are entitled to that opinion.

Mr. AUSTIN. Do you not so construe it?

Mr. MADDEN. No, sir; I construe it as a very proper reprimand.

Mr. AUSTIN. If I had been the Postmaster General, I would have put you out of the office.

Mr. MADDEN. He did not; he saw the letter.

Mr. AUSTIN. You were disloyal to the trust reposed in you as an official of the Government.

Mr. MADDEN. I think you would have been largely alone in that sort of a proposition.

Mr. AUSTIN. That is the way I feel.

Mr. MCCOY. Did the Postmaster General see that letter before it was sent?

Mr. MADDEN. No, sir; afterwards. He realized—I believe he did from his attitude—that the letter of the postmaster was insubordinate and he said: "Let it go at that." I believe that was the remark he made.

The CHAIRMAN. Whether or not the postmaster was justified in writing the letter is a matter which should be determined on the hearing of the whole case. I do not think that we should frame up and express our opinions along through the discussion of the case if we are going to try it at all.

Mr. BRITT. As I understand, the purport of that letter of reprimand of the postmaster, it is a general letter of reprimand. Possibly I lost a sentence that you read. Am I correct?

Mr. MADDEN. Yes, sir.

Mr. BRITT. At that time, what province had the Third Assistant Postmaster General over the personnel of postmasters; I mean over their relations to the department as postmasters?

Mr. MADDEN. The authority of the assistant over the subordinates is on connection with the duties that are assigned to the Third Assistant Postmaster General. When the postmasters who are the subordinates of the assistants neglect their duties or are indifferent, as indicated by that letter of April 23, it is the duty of the officer to whom the insubordination appears to respond.

Mr. BRITT. I will ask you if it was not the custom and regulation at that time as well as now that the province of the Third Assistant Postmaster General in the matter of control or superintendence of conduct or acts of postmasters is not limited specifically to those matters relative to which the postmaster is required to report to that particular assistant?

Mr. MADDEN. I should say so.

Mr. BRITT. And if that letter is in conformity with the procedure?

Mr. MADDEN. Yes, sir.

Mr. BRITT. It is?

Mr. MADDEN. Yes, sir.

Mr. MCCOY. How soon after the letter was sent—I assume it was sent?

Mr. MADDEN. Yes, sir.

Mr. McCoy. Did the Postmaster General see it or a copy of it?

Mr. MADDEN. I could not say.

Mr. McCoy. Approximately?

Mr. MADDEN. A day or so.

Mr. McCoy. Did he at that time indicate any disapproval of the writing and sending of the letter?

Mr. MADDEN. No, sir; not at all. I think there is a note right here. No; it appears in one of the exhibits. The postmaster happened at the time that letter was written to be on his way to Washington and when he came into my office he came from the Postmaster General's office. I realized that he could not have received the letter and when he called on me I handed him a carbon copy of it and told him to read it. He expressed himself as sorry that I took that view, but he said that he had "no hard feelings." That was all he said.

Mr. McCoy. Was it before or after the St. Louis postmaster came in and you handed him the carbon copy that you handed the letter to the Postmaster General?

Mr. MADDEN. I can not give you the time. Mr. Cortelyou was a man who secluded himself a great deal. I have sometimes waited 10 days to get a five-minute interview with him.

Mr. McCoy. You do not know whether the Postmaster General had seen the copy of the letter before the postmaster of St. Louis had seen it?

Mr. MADDEN. No; I do not know that.

Mr. AUSTIN. What is the date of that letter?

Mr. MADDEN. April 27, 1906.

Mr. AUSTIN. April 27?

Mr. MADDEN. Yes, sir.

Mr. AUSTIN. And you were instructed on the 24th by the Postmaster General to institute an investigation against that company?

Mr. MADDEN. Yes, sir.

Mr. AUSTIN. And that letter was written afterwards?

Mr. MADDEN. Upon receiving the instructions from the Postmaster General I wrote the postmaster at St. Louis for the evidence he had of the charges he made, and instead of giving me the evidence he gave me an insulting letter, and he told me that I ought to do what was wanted, namely, put the publications out of the second class, as a fraud order had been issued on a like recommendation. That is what he told me.

Mr. McCoy. Did he ever furnish you with the information that you asked for in this letter?

Mr. MADDEN. No, sir.

Mr. ALEXANDER. The documents in evidence were in the hands of the district attorney, as I recollect.

Mr. BRITT. This letter of reprimand was shown to the Postmaster General before transmission?

Mr. MADDEN. No, sir; I do not say that. I can not give the date. I know this, I often waited a week or ten days, indeed, longer sometimes, to get an interview with the Postmaster General, but I remember distinctly talking to him about this letter, and I know that I had a copy of it with me and I feel very confident that I showed it to him and he read it, and I spoke to him about writing the letter and why I wrote it, and he said: "Let the matter drop." That was all there was about it.

Mr. BRITT. Under the circumstances, did you not consider that letter very extraordinary?

Mr. MADDEN. The postmaster's letter?

Mr. BRITT. Your letter.

Mr. MADDEN. Yes, sir; it was extraordinary, because it was an extraordinary occasion.

Mr. BRITT. And you considered it very extraordinary?

Mr. MADDEN. Yes, sir; I certainly did. If the Postmaster General had written me a letter like that I would have written a similar reply and walked out. No man can write me such a letter and tell me what to do when I am charged with a duty.

Mr. ALEXANDER. Have you a copy of your letter to the postmaster and his letter to you?

Mr. MADDEN. Yes, sir.

Mr. ALEXANDER. I would like to see them for a moment.

Mr. MADDEN. Certainly. [Handing Mr. Alexander letters referred to.]

One can scarcely fail to note in reading the letter from the St. Louis postmaster in its entirety that its attitude is not subordinate; and that he contemplated that the procedure of the Third Assistant was to be a mere formal matter. He was not expected to make too deep an inquiry into the facts, but accept the statements made as a basis for his action. The postmaster points out that in accordance with the recommendations made a fraud order was issued against the bank, but that no action on the recommendations as to the magazines had been taken by the Third Assistant. He says:

It is my earnest hope that the officer at the head of the bureau having jurisdiction over these abuses, and having power to stop them, will give me the loyal and effective support that is due a postmaster under such circumstances.

The postmaster was convinced that the additional postage collected from Mr. Lewis should be retained by the Government, and that the second-class rating of both magazines should be "immediately revoked, because of the unquestionable illegitimacy of his subscription list."

Mr. MCCOY. Does that refer to the \$700?

Mr. MADDEN. No, sir; to the \$30,000 taken.

The postmaster was convinced that the additional postage——

Mr. AUSTIN (interposing). You say that refers to the retention of \$30,000?

Mr. MADDEN. Yes, sir.

Mr. AUSTIN. They had deposited \$30,000 to cover postage?

Mr. MADDEN. In all; yes, sir.

Mr. AUSTIN. That is the first time that figure has been mentioned?

Mr. MADDEN. Yes, sir; it comes later in the record. No; it refers to excess postage. The \$700 was not excess postage, so called, it was the pound-rate postage, and the money was deposited on alleged excess mailings, and the duty imposed upon me by the Postmaster General on April 24 was to determine whether or not, as a matter of fact, the excess mailings had taken place.

The postmaster was convinced that the additional postage collected from Mr. Lewis should be retained by the Government, and that the second-class rating of both magazines should be "immediately revoked, because of the unquestionable illegitimacy of his subscription list."

A compared copy of the postmaster's letter of April 23, 1906, and a compared copy of the chief post-office inspector's letter of April 23, 1906, both addressed to the Third Assistant, and a compared copy of the Third Assistant's reply to the St. Louis postmaster of April 27, 1906, are submitted in one exhibit, No. 20.

EXHIBIT No. 20.

(Compared Copy.)

POST OFFICE DEPARTMENT,
CHIEF POST OFFICE INSPECTOR,
Washington, April 23, 1906.

SIR: Answering your letter of the 19th instant, I regret that I am unable to give you either the originals or copies of reports of inspectors bearing upon the circulation of the *Woman's Farm Journal*, of St. Louis. It is the custom of this office, whenever an indictment has been returned in a matter which has been investigated by post-office inspectors, to entrust the entire case to the Department of Justice. Following this custom, all papers bearing upon the business methods of Mr. E. G. Lewis were forwarded to St. Louis to be placed at the disposition of the United States attorney, at whose instance the indictment was returned in this case. I have no doubt that Col. Dyer, the United States attorney, will permit your representatives to have access to all these papers and to make copies if they are needed so far as may be done without interfering with the criminal prosecution.

As Mr. Lewis has very bitterly assailed the character, motives, and intelligence of the inspectors who have made the investigation, it is suggested that an investigation on independent lines as far as possible will be more satisfactory to this office, and I have to ask that the statements of the inspectors shall not be used in your investigation unless your representatives shall be satisfied that they are founded upon facts.

Very respectfully,

W. J. VICKERY, *Chief Inspector.*

HON. EDWIN C. MADDEN,
Third Assistant Postmaster General.

OFFICE OF THE POSTMASTER,
St. Louis, Mo., April 23, 1906.

HON. E. C. MADDEN,
Third Assistant Postmaster General,
Washington, D. C.

SIR: I am in receipt of your letter of the 19th instant, quoting largely from my letter to you of the 11th instant, informing me of an intended hearing in the matter of the Lewis Publishing Co. on the 27th instant at Washington, and requesting me to present the evidence I have, or copies thereof, before that date.

In reply, I beg leave to state that your request will be complied with, so far as it is practicable to do so.

Before narrating all the facts, however, permit me to express my regret that you have not seen fit to comply with my request of the 11th instant for the papers submitted by Mr. Lewis challenging the correctness of the position taken by this office relative to the legitimacy of the subscription lists to these publications.

Had these papers been brought to my attention I could submit a more intelligent and a briefer report; without them, it becomes necessary for me to take up a multitude of facts and circumstances, and to repeat facts already stated, many of which could doubtless be eliminated were I not blinded as to what particular issues Mr. Lewis has raised in his appeal.

The ramifications are so great and the evidence so intricate and necessary of explanation in many particulars and the time is so short that I do not hesitate to say that I fear that if this is to be the extent to which the Government is to be heard in this appeal its interests will be inadequately represented. Especially will this be true if Mr. Lewis is there in person with his profuse and specious explanations and representations, with nobody (acquainted with the facts) there to combat him.

Entering, therefore, upon a recital of the facts, I will state that in the spring of 1905 an investigation by inspectors was made of the Lewis Publishing Co. and the Peoples' United States Bank, both conducted by E. G. Lewis. From information since obtained, I learned that during the month of May, 1905, as a result of these investigations, revocation of second-class privileges granted the *Woman's Magazine* and the

Woman's Farm Journal (published by E. G. Lewis) was recommended, and that at the same time a fraud order was recommended against the Peoples' United States Bank, E. G. Lewis, its president, and its other officers. In June, 1905, a hearing was granted Mr. Lewis at Washington by the Assistant Attorney General for the Post Office Department on the recommendation of a fraud order against the bank. On the same day a hearing was granted him by your office on the question of the revocation of his second-class privileges. Subsequently the Assistant Attorney General recommended to the Postmaster General that a fraud order be issued. On July 6 the Postmaster General, upon this recommendation, issued the said fraud order against Lewis and his bank, which fraud order is still standing. This bank fraud was promoted, and made possible by use of the editorial columns of the Woman's Magazine and Woman's Farm Journal.

On December 1 following Lewis was indicted for devising a scheme to defraud in connection with the promotion of his bank, and also for conspiracy with other officers of the Lewis Publishing Co. to defraud the United States of large amounts of revenue, resulting from mailing copies of his publications at the pound rate, in excess of the number he was legally entitled to mail. These criminal cases are still pending and will be brought to trial within a month or two. No action, so far as this office is advised, has been taken by you in connection with the recommendation and hearing on the matter of revoking Lewis's second-class privileges.

Since the fraud order was made effective Lewis has vilified and maligned every officer in any way connected with the issuance of the fraud order against him, from the head of the department down, including the judge of the United States court, and has placed all of them in the category of thieves, conspirators, dishonest officials, dupes, or incompetents. In letters signed by Lewis and in articles published regularly in his publications since the fraud order was made effective (all of which are teaming with anarchistic statements and charges of official corruption) your name alone, as an official, has received favorable comment. The effect of this on thousands of his credulous readers is appalling as is evidenced by the fact that not only as postmaster, but other officials of the department here in St. Louis have received many letters of vituperative condemnation for the course we have pursued in our efforts to protect the revenues of the Government.

About September 1 last information reached me that Mr. Lewis was systematically mailing his publications to "actual subscribers" in distinguishing wrappers. My employees one evening were instructed to make a proper separation and notation of the September mailings of the Woman's Farm Journal and the September mailings of the October issue of the Woman's Magazine. These tests confirmed the information received as to the distinguishing wrappers. Beginning with the date of October 5, 1905, the mailings of the Woman's Farm Journal were again weighed and tested with the same confirmatory results. On October 13, 54 clerks from this office were detailed by me to visit the Lewis Publishing Co.'s plant, and call for and count their subscription lists. This was done in conjunction with the inspectors who were working on the case. All of the card records bearing names of subscribers were called for from Mr. Lewis, and when the count was completed the number of actual current subscribers to the Woman's Farm Journal was found to be 141,328, and to the Woman's Magazine, 539,901.

In the meantime the matter had been presented to the United States attorney for this district, who advised the holding of all the illegitimate mailings of the October Woman's Farm Journal as evidence in the criminal case to be instituted by him.

Attempts to test the October mailings of the November issue of the Woman's Magazine by distinguishing wrappers were thwarted by Lewis's action in changing the system of wrapping, after our count of his subscription lists, and after his learning that the distinguishing system of wrappers had been discovered by us; but a test made from names selected systematically from his mailings of this issue of the Woman's Magazine showed the percentage of illegitimate mailings to be practically the same as was found by the distinguishing system of wrappers used the month previous. Since that time both publications have been mailed without system as to distinguishing wrappers, and with every apparent effort on Mr. Lewis's part to prevent the department, if possible, from gathering further facts as to the exact number of his illegitimate mailings.

We have continued since that date testing his mailings by inquiries through postmasters, as to addresses shown on his publications, with the result that not to exceed 55 per cent of those mailed by Lewis as legitimate subscribers (not marked samples) are legitimate subscribers to the Woman's Magazine, and not to exceed 56 per cent are legitimate subscribers to the Woman's Farm Journal. These are general averages arrived at from the full five months' tests since the count.

From the tests made and evidence in our possession, it is shown that prior to the date of our count Lewis was padding his mailing lists, by the use of names purchased

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or sample-copy purposes, and not by the use of expired subscriptions. After the count, Lewis resorted largely to the use for padding purposes, of his expired subscription lists covering a period ranging from one month to three years, of a number about equal to his actual list, as shown by his subscription card records, not abandoning entirely the use of purchased sample-copy names. His attempt to legalize expired subscriptions was made in face of standing notices carried in both of his publications, reading as follows:

"Discontinuances: Subscribers wishing the Woman's Magazine stopped at the expiration of their subscriptions need not notify us to that effect. We consider it their wish to have it discontinued if they do not renew promptly when notified that the time paid for has expired. * * *

"If you find this paragraph marked, it means that your time is out and that we will stop sending the magazine if not renewed within 30 days. We do not want to lose you, so please renew at once. * * *

"We discontinue sending papers when time paid for expires, unless renewed within 30 days."

Lewis's alleged "citizens' committee," in charge of Mr. L. B. Tebbetts (a director in one of Mr. Lewis's enterprises—the University Heights Realty Co.), lays claim to the legitimacy of expired subscriptions under the amendment to section 436, Postal Laws, promulgated December 16, 1905, by your office. With this exception their count and the count made by this office are practically alike.

As bearing on the question of the number of legitimate subscribers to the Woman's Magazine, Lewis made affidavit in this office on October 12, 1905, that he had over 800,000 "paid-in-advance subscribers." On March 22, 1906, some six months previous, when asked by the inspectors, he states in writing that he has in cash-paid-in-advance subscribers to the Woman's Magazine over one and one-quarter million, and to the Woman's Farm Journal over half a million. In addition to this, his September mailings of the October issue of the Woman's Magazine (made from September 20 to September 30, 1905, before my count was made) shows that he mailed but 651,155 copies of the Woman's Magazine as regular subscribers and 464,055 as samples, and that on October 20, just after the count, he mailed of the November issue of the Woman's Magazine as regular subscribers 1,553,425 copies and 96,310 as sample copies, an alleged increase of 903,270 regular subscribers in one month and an alleged decrease of 377,745 sample copies in one month. In face of these indisputable facts I can not understand why any of his statements or explanations are accepted as truthful or why he should be given the sufferance of second-class privileges another day.

Returning to the number granted Mr. Lewis by this office as legitimate subscribers, it should be stated that, under what appears to be the proper construction of the postal laws and the recent amendment of your office, a large proportion of this number are not legitimate subscribers according to this ruling. Mr. Lowenstein (who, with Mr. Walter B. Stevens, had charge of the count of Lewis's subscriptions made by the alleged "citizens' committee") admitted to us that, of the subscriptions counted, the class containing the largest number of subscribers was the "Five-cent clubs;" the next largest "Single subscriptions," and the next largest, "Six-cent clubs" or "Renewals." From this it will be seen that by the reduction made by Lewis from the already nominal subscription price, these subscriptions are illegitimate. Further, as stated in my letter of the 11th instant, this number is unquestionably made up to a considerable extent of subscriptions obtained in contravention of the different rulings of your office. In one instance practically 1,000 subscriptions were sent in by a dealer in "face and tooth powder" for advertising purposes; the rate of subscription paid was 5 cents per annum. Another case is where over 600 subscriptions were obtained since January 1, 1906, by so-called "clubbing arrangements with another newspaper," by which the Woman's Magazine is practically being sent gratis as a premium, the nominal rate of 5 cents per annum being charged. The entire list of these names and addresses is now in the hands of the prosecuting officers. Another illustrative case is where a medicine company in a southern city advertised to send "free" the Woman's Magazine for one year for two cartons (or outside wrappers) taken from 50-cent bottles of medicinal preparations. Upon investigation it developed that in return for advertising in the Woman's Magazine Lewis supplied this company with 400 yearly subscriptions to the Woman's Magazine free, the list of names being supplied by the drug company.

In addition to this some 200,000 names, taken from the sample lists, have been added by Lewis to his legitimate subscription lists of persons who have never sought and paid for the publication. This has been done under the pretense that their subscription was paid out of a "special fund" donated by Lewis's friends, the names to be selected by Lewis; but even under this arrangement it is in evidence that the addressees did not receive the publications continuously or in consecutive months—in other

words, the lists under this arrangement were changed monthly. These facts are all supported by evidence now in the hands of the prosecuting officer of the Government.

On the facts above outlined, and on other facts all of which can be corroborated by evidence now in the hands of the prosecuting officer of the Government, my action was based in demanding of Mr. Lewis additional postage on his publications, and my recommending to the department the revocation of his second-class privileges on both publications, which recommendation I now desire to decidedly renew.

As a result of the second presentation of the Lewis case to the grand jury this week, and the continuous need of this evidence by the United States attorney and the inspectors in the preparation and conduct of the criminal case against Lewis, and because the prosecuting officers have expressed the inadvisability of forwarding the evidence or copies thereof at this time, and object to it, I regret to state that I find it impracticable to comply with your request to transmit the documentary evidence in this case.

In conclusion, permit me to state that I have not acted in the premises named without full realization of my responsibilities, and am not insensible to the criticism and abuse which on the part of Lewis and his friends, has followed such action and which will continue so to do. As postmaster, however, I find it my duty to so act in order that the revenues of the Government already subjected to frauds perpetrated to the extent of some \$75,000 to \$100,000 in the past two years, might not be further defrauded to the extent of about \$8,000 per month, and it is my intention to continue the performance of this duty faithfully and fearlessly. In doing so it is my earnest hope that the officers at the head of the bureau having jurisdiction over these abuses, and having the power to stop them, will give me the loyal and effective support that is due a postmaster under such circumstances.

I desire to again express it as my conviction that not only should the additional postage collected from Mr. Lewis be retained by the Government, but that the second-class privilege granted the Woman's Magazine and the Woman's Farm Journal should be immediately revoked, because of the unquestionable illegitimacy of his subscription lists, and his gross abuse of second-class privileges in the use of these publications primarily for advertising purposes.

Respectfully,

FRANK WYMAN, *Postmaster.*

APRIL 27, 1906.

HON. FRANK WYMAN,
Postmaster, St. Louis, Mo.

DEAR SIR: Your letter of April 23, a copy of which was also sent to the Postmaster General, is received.

This is not a reply to such parts of your letter as are responsive to my letter of the 19th instant calling for information. There are certain portions of your letter, however, not concerned with the merits of the matter to which it relates, which, by reason of their unusual character, require special notice at this time.

You should understand that the second-class mailing privilege of any publication depends upon the facts pertaining to that publication as mailable matter, and the circumstances, if true, that a publisher has "vilified and maligned every officer in any way connected with the issuance of the fraud order against him, from the head of the department down, including the judge of the United States court, and has placed all of them in the category of thieves, conspirators, dishonest officials, dupes, or incompetents," or the circumstance that the statements made by him are anarchistic, or that any one official has not been the object of his displeasure, are matters wholly disconnected from his right to the second-class mailing privilege, and are matters which you should not permit to enter into the consideration which you as an official are required to give the case. If the publisher has libeled you or any other official there is a remedy at law.

It is especially important that an official charged with administering the postal laws and regulations uniformly should, in the discharge of his functions, be entirely unbiassed by such circumstances as those upon which you dwell in your letter. Particularly should you endeavor to eliminate from your investigation and report upon the physical facts involved in the inquiry the supposed effect, however appalling in your judgment, of these statements upon the readers of the publication. Neither should you take into consideration as an official the letters of vituperative condemnation which you say you have received. While your protestation that you intend to continue to perform your duty faithfully and fearlessly is commendable, and you will have the support of this bureau whenever your action is just, lawful, and reasonable, you should not, by reason of the criticism and abuse to

which you say you have been subjected, put yourself in the frame of mind of one suffering from delusions of persecution, nor should you permit the irritation, which as an individual you may naturally feel on that account, to drive you to imperil the success of administration by over-zealous or hysterical measures.

It is my duty to inform you that the cases of the publications mentioned in your letter are now with this bureau. They involve two questions: First, whether the excess mailings alleged by you are, as a matter of fact, excess under the usual rules applicable to all publications; second, the right of the publications, as such, to the second-class mailing privilege.

The facts with respect to the fraud order against the People's United States Bank and the indictment of Mr. E. G. Lewis in connection with the promotion of that bank and for conspiracy to defraud the postal revenues, recited at length in your letter, are matters of which this bureau has already official cognizance and which, in the request for information concerning your ruling as to excess copies, you were not called upon to recount at length. Neither is it your duty to pass judgment upon the extent to which the Government is to be heard in the appeal from your ruling, nor upon the question whether its interests will be adequately represented. Equally superfluous is your statement that "no action, so far as this office is advised, has been taken by you in connection with the recommendation and hearing on the matter of revoking Lewis's second-class privileges." Whether action has been taken by me or not is something which I may be assumed to know, and your statement to that effect in an answer to a letter calling upon you for information can be accounted for only upon the view that you assume to sit in judgment upon the actions of this bureau and to express contempt for them. You must know that conduct of this character will not be tolerated, and that a repetition of it will involve consequences more serious than the rebuke and reprimand which is now administered to you. This reprimand applies equally to other statements in your letter, among them the expression of your surprise that any of Mr. Lewis's statements or explanations are accepted as truthful, or that he should be given the sufferance of second-class privileges another day. The law has not delegated to you the power or authority to pass upon the second-class privileges of any publication, nor, so long as you remain a subordinate officer of this department are you at liberty to review, or express your disapproval of, the decisions of your superiors.

It is unnecessary for the present purpose to refer to further evidence in your letter of the attitude of insubordination in which you place yourself.

It is hoped and expected that hereafter in the management of that part of the public business committed to your care you will confine yourself to the duties which you are called upon to perform, and in doing so will display sanity, moderation, and dignity.

Respectfully,

EDWIN C. MADDEN,
Third Assistant Postmaster General.

(Compared copy.)

Mr. AUSTIN. You have that letter?

Mr. MADDEN. No, sir. It was just a declination to furnish any evidence.

Mr. AUSTIN. I would like to have that read inasmuch as you have read the letter of the postmaster at St. Louis, and I would like to know if he was reprimanded?

Mr. MADDEN. He did not write an insulting letter. Bear in mind that the chief post-office inspector is at Washington and——

Mr. AUSTIN (interposing). The division inspector or inspector in charge is at St. Louis?

Mr. MADDEN. Yes, sir.

Mr. AUSTIN. Read his letter.

Mr. MADDEN. I will see if I have it. I think I have.

Mr. AUSTIN. I think you said that you had copies of all documents made?

Mr. MADDEN. Let me go into that for a moment. I told my clerks——

Mr. AUSTIN (interposing). The Government clerks?

Mr. MADDEN. Yes, sir; my private secretary and chief clerk. I saw that there was a conspiracy on to ruin this enterprise and that

they proposed to use my hand in the matter, if possible, because I was the proper officer to act. I wanted to reserve to myself an extra carbon copy, so that I might have the record in case it became necessary for me to protect myself in the future. Now, that was all the order I gave, except an occasional letter would come in that I would take up specially, but my clerks went to work and collected for me a great deal more than I expected. I did not give any directions, except to furnish me with copies of the record so far as communications were had with the Postmaster General and the postmaster. It happened, when I found out what they had given me, that I had considerably more than I had expected.

MR. AUSTIN. Are the men who furnished you with the copies still in the service of the Government?

MR. MADDEN. No; one is out. I had about four clerks working for me there. I think Mr. Lovejoy is there.

MR. AUSTIN. Give me the names of all of them. I think they should be removed from the public service.

MR. BRITT. The question of the constraint of the superior officer should be considered in that case.

MR. AUSTIN. I want an investigation of that business.

MR. MADDEN. Mr. Travers and Mr. Lovejoy. Miss Smith was another; she did some of it. Let me see—I think Mr. Partridge was there at that time; I do not remember for sure.

MR. BRITT. Mr. Partridge is in the service now. I do not know when he came there.

MR. MADDEN. I do not know whether he was one of them at the time. They are all the names I recall at this moment. They were in my immediate office.

MR. AUSTIN. Have you the inspector's letter from St. Louis?

MR. MADDEN. If I have not got it I will get it, because I have seen it. I considered it quite important because of giving me the evidence. He told me it was in the hands of the district attorney to prosecute on the criminal indictments that I have alleged were fraudulent.

MR. AUSTIN. That is the same answer the postmaster gave you?

MR. MADDEN. No, sir. It is just a brief letter, saying that he did not have anything; that it was all with the district attorney. That will be explained a little later on.

On April 30 the company by its representatives came on to be heard on its appeal, and was heard. The hearing lasted two days. Nothing conclusive was shown. It was arranged that the Third Assistant should send a commission to St. Louis to count the subscriptions for the issues of the magazines of which the postmaster had alleged excess copies were mailed, and was holding excess postage in trust, pending a decision on the appeal from his ruling.

The commission consisted of five persons; four of them the "special agents"—not inspectors now; Mr. Wood, who was here the other day, was one of them—authorized by law for the classification division of the Third Assistant's bureau. They were experts in their line. This commission required the assistance of 60 clerks from the St. Louis post office. The instructions were to count only the written subscription orders of the subscribers themselves. That would be the true test, the best evidence, of subscription. It would determine whether there were or not a legitimate list of subscribers for each

magazine and the extent thereof. The question to be decided was an entirely numerical one, namely, first, how many subscribers there were for each magazine of the issues in dispute; and, second, the number of copies of those issues mailed. If the subscribers were equal to one-half the copies mailed, there was, under the rule applied, no excess.

It depended upon the findings of the commission whether action should be taken on the broader question of the right of the magazines to be mailed as second-class matter as recommended.

The commission occupied three months and a half in making the count.

Mr. BRITT. You stated a moment ago that it was arranged to send this commission. Is it not a fact that this commission was appointed and directed on your own initiative?

Mr. MADDEN. Yes, sir; in this way; permit me to explain. At the hearing Lewis was unable to present any evidence satisfactory to me to determine the question that I was to determine.

Mr. BRITT. At what hearing was that?

Mr. MADDEN. April 30 and May 1.

Mr. MCCOY. In Washington?

Mr. MADDEN. In Washington; yes, sir. The evidence in the case weighed tons, and I asked him if he was willing that we might send a commission there to count those orders and determine how many subscribers he had for each publication. He agreed to that. Therefore I did appoint these people, with the understanding with the Postmaster General, and submitted to him my instructions to that commission before they went out.

Mr. AUSTIN. How long after the commission was named before they began work?

Mr. MADDEN. They went right out, in a day or two.

Mr. AUSTIN. Who was on the commission?

Mr. MADDEN. Mr. Wood, who was here the other day; Mr. Fettis—I can not speak the other names; they are in the record somewhere, but I can not speak them now. But Mr. Fettis was the chairman.

Mr. BRITT. And the clerks of whom you speak were detailed from the St. Louis post office?

Mr. MADDEN. Yes, sir. First, the postmaster refused to detail any clerks to assist in the count, and I had to get an order.

Mr. AUSTIN. What reason did he give?

Mr. MADDEN. I forget his reason.

Mr. AUSTIN. He could not spare the men from the work in the office?

Mr. MADDEN. I presume something of the kind; but I appealed to the First Assistant. If I had to decide this question I had to have the count made. The postmaster said they were away on vacation, I remember now.

Mr. BRITT. As a matter of fact, he would be without authority to detail them without the order of the First Assistant?

Mr. MADDEN. The First Assistant gave it. But I do not think that important. While it was at work in the publishing company's office and plant, some matters of interest and having a bearing on the case occurred.

I submit herewith a compared copy of a letter from President Lewis, of the Lewis Publishing Co., dated June 16, 1906, also a letter from him on the same subject, dated June 19, together with a copy

of a letter written by him to the postmaster at St. Louis, and a copy of a telegram of the same date from President Lewis, all sent by him to the Third Assistant; also copies of memoranda, June 19, 20, and 22, Third Assistant to the Postmaster General, transmitting the complaints of President Lewis to him, in one, marked "Exhibit No. 21."

EXHIBIT No. 21.

THE LEWIS PUBLISHING Co.,
St. Louis, June 16, 1906.

Hon. EDWIN C. MADDEN,
Third Assistant Postmaster General,
Washington, D. C.

DEAR SIR: We beg to enter a most respectful protest against what appears to be a most unjustifiable and unnecessary attempt to use the present investigation being made by your special commissioners as a cloak to further the purposes and designs of local postal officials who have already procured criminal indictments against officers of this company in connection with the mailing of our publications. For some two weeks past, two clerks, working separately from the remainder of the clerks, and apparently under direct and continuous orders from the post-office inspectors, have been conducting a separate and independent investigation into our matters, receiving their instructions and reporting continuously throughout the day from and to the local post-office inspectors and Mr. Wyman, the St. Louis postmaster.

We have not the slightest objection to any possible method of investigation you and your commissioners may desire to undertake, and everything in connection with this establishment, our books, records, and everything are open at all times to them for the purposes of any examination they choose to make.

We entered a respectful protest to Mr. Fettis, and for two days they did not appear at our office. Yesterday they again appeared and continued their former proceedings, copying papers and documents and apparently conducting some special investigation of their own, entirely outside of and independent of that being made by your representatives. We are informed by your Mr. Fettis that these men are not under his jurisdiction nor are they acting for him as a part of the present force under his charge, but that their investigation is a separate and independent one so far as he is concerned.

You are well aware of the criminal indictments pending against the officers of this concern, and we have to-day made a formal demand on Mr. Wyman for a letter from him, advising us of his purpose in this present investigation and giving us some credentials for the young men now apparently acting for him. He declined to give us any such information in writing.

We most respectfully protest against this interference with the present open and, what we believe to be, entirely fair investigation; and submit that in view of the present proceedings, such course of action on the part of the postmaster and the local inspectors should not be tolerated.

Will you kindly wire us on Monday morning in regard to this matter, although we want it distinctly understood that we do not desire to in anywise interfere with any methods or plans which you may think best to carry out, or your Mr. Fettis and his commissioners may consider proper and necessary.

Very respectfully, yours,

THE LEWIS PUBLISHING Co.
E. G. LEWIS, President.

(Compared copy.)

JUNE 19, 1906.

Mr. FRANK WYMAN,
Postmaster, St. Louis, Mo.

DEAR SIR: For some time past we have noted what appears to be some sort of a private and separate investigation being conducted by two men under your orders and under cover of the investigation of the Woman's Magazine and the Woman's Farm Journal subscription lists, now being conducted by a special commission at the order of the honorable Third Assistant Postmaster General.

We enter a protest to you in regard to this matter and ask from you some credentials or written statement as to the purpose of this investigation and its nature. You have so far refused to furnish us with any statement of any sort in regard to the purpose and nature of this apparently secret and private investigation being conducted at your

Written inquiry to Mr. C. S. Fettis, chairman of the board of commissions acting under the direct orders from Washington, as to whether these men and the eight additional men which have appeared at our office this afternoon—apparently to act entirely separate from the commission and under orders and for purposes not disclosed to us—have any part in the investigation now being conducted by the commission or are under his jurisdiction. Mr. Fettis has replied in writing that these men are not acting under his jurisdiction and are not in any wise a part of the commission making the present investigation, but under instructions from the department are to be permitted by his commission to "perform the duties which the postmaster has assigned to them," which duties are not stated.

Further written inquiry addressed to Mr. Fettis, to whom you refer us for information, has brought forth the written reply that his commission must refer us to you for the information requested.

In view of these facts and in view of your refusal to accord us the common courtesy of a statement as to the purpose of this investigation, its nature, or what information you are seeking, and in view of the criminal indictments procured against officers of this concern through the efforts of yourself and the local inspectors, we must request an immediate statement from you covering the matter if we are to permit these men, not connected with or under the jurisdiction of the special commission sent out here from Washington nor having anything whatever to do with it, to examine or handle or in any wise pry into our private records, papers, and documents, until we are furnished with some official communication from you, the commission, or your superiors, determining the nature and purpose of this private investigation on your part.

We have no objection to offer to any sort of an open above-board investigation conducted in good faith, but can not understand your reasons for secrecy in this matter.

Respectfully,

THE LEWIS PUBLISHING CO.,
E. G. LEWIS, *President.*

(Compared copy.)

THE LEWIS PUBLISHING CO.,
St. Louis, June 19, 1906.

HON. EDWIN C. MADDEN,
*Third Assistant Postmaster General,
Washington, D. C.*

DEAR SIR: We hand you herewith a copy of the correspondence which has passed between us and the local postmaster and your commission of this date in regard to the private and independent investigation, of whose nature and scope and purpose we are refused all information both by the local postmaster and by your commission. We also hand you a confirmation of our telegram of to-day to you.

These proceedings on the part of the local postmaster and inspectors seem most extraordinary, but are in accordance with the previous methods which they have adopted toward us during the past year.

We note that these eight men, acting independently of your commission, and over whom your commission state that they have no jurisdiction, are taking the packages and bundles of papers, documents and subscriptions after they are compiled, tabulated, and counted, and recorded by your commission, and are opening and resorting these packages so that if any question arises as to the result of the accuracy of the count of any particular packages or any other matters in relation thereto, these packages will have been so disorganized and resorted as to render the record of your commission's investigation practically null and void so far as reference to the original documents is concerned.

As the methods being adopted by the local department are so patently for the purpose of endeavoring to draw from us a protest, which will enable the local department to make an outcry to the effect that we are hindering and preventing the investigation, and thereby seek to endeavor to have called off altogether, the present investigation being made by your commission before it can complete its work, we again enter a respectful protest to you and to the honorable Postmaster General in regard to this matter and ask that we be accorded our right by the local postmaster and inspectors in this matter by being informed of the nature and purpose of this independent and secret investigation being conducted entirely outside the jurisdiction of your commission.

Respectfully yours,

THE LEWIS PUBLISHING CO.,
E. G. LEWIS, *President.*

(Compared copy.)

It is extremely objectionable to us to have to make any protest. We want only what we are sure you and Mr. Cortelyou want, that the facts be determined in a fair, open manner.

[Telegram.]

St. Louis, June 19, 1906.

Hon. EDWIN C. MADDEN,
Third Assistant Postmaster General,
Washington, D. C.

Written inquiry as to nature of secret investigation now being conducted by eight men under orders of local postmaster. What this purpose is and what information they seek, made to local postmaster, is answered by refusal to give us any information in regard to it. Referring us to your commission. Written inquiry to your commission has been replied to in writing by Mr. Fettis that men in question are not a part of his investigation, or under his jurisdiction, and refers us to local postmaster, who refused to inform us on the subject or give any credential to men. In view of above facts, unless we can be informed by some one in authority of the purpose of this independent and secret investigation, and the nature of the information they seek, we must request such information at once. If we are to permit these men, having no connection with your commission and investigation and apparently acting under secret orders of local postmasters and inspectors who have already procured criminal indictments, to have access to our private records, papers, books, and documents until informed of its purpose. We make no objection to any fair and open investigation, but can not submit to secret independent investigations of whose purpose we are refused any information. Will you kindly advise us by wire in regard to this matter. Our documents and private papers are turned over to your commission. These eight men take the documents after being counted, investigated, and tabulated by your commission and do what they please with them, subject to no control by your commission or us. If discredit is brought on result of your commission's labors it will be due to local postmaster's and inspector's acts, which have the appearance of that purpose.

THE LEWIS PUBLISHING CO.,
 E. G. LEWIS, *President.*

(Compared copy.)

[Memorandum for the Postmaster General.]

JUNE 19, 1906.

Gen. CORTELYOU:

I beg to hand you herewith a letter dated June 16, and addressed to me by Mr. E. G. Lewis, president of the Lewis Publishing Co., of St. Louis. It relates to the action of the local post-office inspectors and the postmaster in making an investigation of their own at the time the investigation by this office is in progress. It probably grows out of the instruction sent to Mr. Fettis as directed by your note to me of June 11.

Please note that Mr. Lewis asks a reply by wire. His letter was received yesterday, but I was unable, because of pressure of business, to give it any attention.

Respectfully submitted.

EDWIN C. MADDEN,
Third Assistant Postmaster General.

(Compared copy.)

[Memorandum for the Postmaster General.]

JUNE 20, 1906.

I am this morning in receipt of the attached telegram from E. G. Lewis, president of the Lewis Publishing Co., of St. Louis. I specially invite your attention to the last sentence of the telegram, which is as follows:

"If discredit is brought on the result of your commission's labors, it will be due to the local postmaster's and inspector's acts, which have the appearance of that purpose."

In relation to this telegram, as in relation to the letter of Mr. Lewis dated June 16, which I submitted to you yesterday, I am unable to take any action. The investigation of which Mr. Lewis complains is not by my direction and is not under my control. Please direct me as to the reply to be made.

Very respectfully,

EDWIN C. MADDEN,
Third Assistant Postmaster General.

(Compared copy.)

[Memorandum for the Postmaster General.]

JUNE 22, 1906.

Gen. CORTELYOU:

I beg to hand you herewith a letter addressed to me under date of June 19 by Mr. E. G. Lewis, president of the Lewis Publishing Co., of St. Louis. All the exhibits referred to therein are also inclosed.

The letter relates to the separate investigation now being conducted by the postmaster, and concerning which I handed you correspondence and telegram under dates of June 19 and 20. It is not a matter that I can deal with, because the investigation complained of is not by my direction and not under my control.

I shall be glad if you will direct me what to say in reply to Mr. Lewis.

Respectfully submitted.

EDWIN C. MADDEN,
Third Assistant Postmaster General.

(Compared copy.)

The following is from President Lewis's letter of June 16:

We beg to enter a most respectful protest against what appears to be a most unjustifiable and unnecessary attempt to use the present investigation being made by your special commissioners as a cloak to further the purposes and designs of local postal officials who have already procured criminal indictments against officers of this company in connection with the mailing of our publications. For some two weeks past, two clerks, working separately from the remainder of the clerks, and apparently under direct and continuous orders from the post-office inspectors, have been conducting a separate and independent investigation into our matters, receiving their instructions and reporting continuously throughout the day from and to the local post-office inspectors and Mr. Wyman, the St. Louis postmaster.

We have not the slightest objection to any possible method of investigation you and your commissioners may desire to undertake, and everything in connection with this establishment, our books, records, and everything, are opened at all times to them for the purposes of any examination they choose to make.

We entered a respectful protest to Mr. Fettis, and for two days they did not appear at our office. Yesterday they again appeared and continued their former proceedings, copying papers and documents and apparently conducting some special investigation of their own entirely outside of and independent of that being made by your representatives. We are informed by your Mr. Fettis that these men are not under his jurisdiction nor are they acting for him as a part of the present force under his charge, but that their investigation is a separate and independent one so far as he is concerned.

You are well aware of the criminal indictments pending against the officers of this concern, and we have to-day made a formal demand on Mr. Wyman for a letter from him, advising us of his purpose in this present investigation and giving us some credentials for the young men now apparently acting for him. He declined to give us any such information in writing.

We most respectfully protest against this interference with the present open and, what we believe to be, entirely fair investigation, and submit that in view of the present proceedings such course of action on the part of the postmaster and the local inspectors should not be tolerated.

Will you kindly wire us on Monday morning in regard to this matter, although we want it distinctly understood that we do not desire to in anywise interfere with any methods or plans which you may think best to carry out or your Mr. Fettis and his commissioners may consider proper and necessary?

Mr. McCoy. Who were on that commission?

Mr. MADDEN. I have named Mr. Fettis as the chairman.

Mr. McCoy. Who was he?

Mr. MADDEN. He was one of the special agents authorized by Congress for the classification division.

Mr. McCoy. And who were the other two?

Mr. MADDEN. One of them was Mr. Wood, who sat here up to to-day with Mr. Britt.

Mr. McCoy. What was his connection then with the department?

Mr. MADDEN. Mr. Wood was then a special agent. There were only four special agents, and I sent the entire four.

Mr. AUSTIN. They were Mr. Madden's subordinates there in the Third Assistant's bureau?

Mr. MADDEN. They were in the classification division, and they had been authorized by Congress for that identical work.

This matter may be briefly explained. Presumably, the Postmaster General had placed the case in the hands of the Third Assistant April 14. The work of determining the simple question of how many subscribers there were for the issues in dispute was, by consent of the company, conducted at its establishment.

Mr. AUSTIN. Have you the date when this commission went out to St. Louis to make this investigation?

Mr. MADDEN. It would be, I think, about May 5; I would not say it was very far from that. The hearing closed on May 1, and I say within two or three days after that—

Mr. AUSTIN. 1907?

Mr. MADDEN. 1906.

Mr. AUSTIN. 1906; that is right.

Mr. MADDEN. This was for the convenience of the postal officials as well as the company. If the company had objected to the presence of the officials in its establishment, the subscription orders and records might have been sent to the post office, where the count would have had to be made. The commission could work in the company's offices only by its courtesy and consent.

That is precisely what you [Mr. Britt] stated here in the record some time ago.

President Lewis now complains, on June 16, that this investigation of the Third Assistant is being made the cover for some secret inquisition on the side, conducted by the post-office inspectors and the local postmaster, for some purpose of which he is not informed and is unable to get a satisfactory explanation. The letters and telegrams of complaint from President Lewis have been sent to the Postmaster General with several memoranda of transmittal.

Three days later, June 23, the Postmaster General writes the Third Assistant, responding to the memoranda. The following is from his letter to the Third Assistant.

I call your attention especially to this, gentlemen.

Mr. AUSTIN. This is a letter from the Postmaster General to you?

Mr. MADDEN. From the Postmaster General to the Third Assistant, the most astounding proposition that I ever heard of in all my life.

Your memoranda of the 19th, 20th, and 22d instant, accompanied by letters addressed to you by Mr. E. G. Lewis, president of the Lewis Publishing Co., of St. Louis, under dates of the 16th and 19th instants, and also by copies of correspondence between the Lewis Publishing Co. and Mr. Fettis and the postmaster at St. Louis, in regard to the investigation being made of the circulation of the *Woman's Magazine* and the *Woman's Farm Journal*, have been received and carefully considered. Mr. Lewis in his letter of the 16th instant complains that:

"For some two weeks past, two clerks, working separately from the remainder of the clerks, and apparently under direct and continuous orders from the post-office inspectors, have been conducting a separate and independent investigation into our matters, receiving their instructions and reporting continuously throughout the day from and to the local post-office inspectors and Mr. Wyman, the St. Louis postmaster."

And therein Mr. Lewis further says:

"We are informed by your Mr. Fettis that these men are not under his jurisdiction nor are they acting for him as a part of the present force under his charge, but that their investigation is a separate and independent one so far as he is concerned."

Mr. Lewis in his letter of the 19th instant advises you that these clerks have now been increased to eight men.

I desire that Mr. Fettis be emphatically reminded that it is his duty to obey instructions and not to make comments thereon, particularly to persons whom he is investigating; that he shall, as was contemplated in my previous instructions, assume direction of the clerks referred to; that their investigation be made a part of the investigation being carried on by him; that the information so obtained be transmitted daily to you by Mr. Fettis, and I desire that it be by you promptly transmitted to me. Mr. Fettis should not disclose to Mr. Lewis the information thus obtained.

Gentlemen, I call your attention to the fact that for the second time the Postmaster General, on April 14, 1906, appeared to turn the case back to the Third Assistant to be handled along the usual lines. And here, in that company's plant, under cover of the Third Assistant's open investigation to make a mere count of the subscriptions, he was conducting some sort of a secret inquisition into the books and papers of the company, surreptitiously, making the company believe that it was part of my investigation to determine those matters that were given to me to determine, using my commission as a cloak to deceive the company.

Mr. BRITT. Mr. Madden, one moment. Do I understand you to condemn the action of the Postmaster General in the request that the head of the commission, Mr. Fettis, shall not communicate his findings to the publisher, but shall communicate them to you? Do I understand you hold—

Mr. MADDEN. No, sir; he did not say communicate them to me.

Mr. BRITT. Do I understand you to condemn the fact that he requests that Mr. Fettis not communicate his findings or talk with the publisher?

Mr. MADDEN. No, not exactly that. I will explain. The instructions which were given to the commission when it went out were that the question to be determined was a numerical one, "How many subscribers have they got?" and to determine that question count the original written orders; that was the best evidence, just a numerical count. Now, Mr. Lewis had consented that that be done at his plant, instead of standing on his right not to allow us in his place, and sending the records to the post office to be counted, where we would have had to do it if he had so elected. He was good enough to let us go into and use his office, his place, and give us our quarters, where we stayed three months and a half. The instructions to the commission were that the company was entitled to have representatives there to watch the count, to take such notes as they pleased, and overlook it—a perfectly proper proceeding. The Postmaster General, under cover of that commission, sends in secret agents to make some inquisition, unknown to me, and of which I am not informed, and he says, "Tell your Mr. Fettis to accept from those people every day the results of their work, and have him send it to you, addressed to you," so as to perfect the deception upon Lewis; that it was for me—"you," he says, "unopened, to transmit that package to me."

Mr. McCoy. Did he use the word "unopened.?"

Mr. MADDEN. I do not know; I may have gone too far. There is another letter. I think he did in another subsequent letter. I got the word "unopened" in this way—excuse me—that the first package that came in came somewhat broken. It was a large package, I presume as large as that [indicating], and in transmission had been broken on the corner, something of the kind, and in transmitting it

to the Postmaster General I said: "This is transmitted to you unopened, and if you find anything in it pertaining to the investigation which I am conducting, I ask you to return it to me." That is where I got the "unopened." I take that back. That is a mistake. Acting under these instructions, the Third Assistant wired the chairman of his special commission in St. Louis to assume charge of the men working on this secret inquisition, as if they were working for him; to cause them to report to him, but not to disclose what they had obtained, and send the results daily to the Third Assistant.

The Postmaster General did not inform the Third Assistant of the purposes of this secret inquiry under cover of his investigation.

Mr. AUSTIN. Have you any proof that the Postmaster General directed what you call a "secret investigation?"

Mr. MADDEN. Yes, sir. It is right here in this letter I have read. He says: "Have those reports handed to me."

Mr. AUSTIN. I know, but is there anything in that letter, or anywhere else, showing that the Postmaster General directed these inspectors or clerks?

Mr. MADDEN. No; but they could not be there except by his direction.

Mr. AUSTIN. Could not the chief of the post-office inspectors send them?

Mr. MADDEN. But the chief of post-office inspectors would not send them without the Postmaster General's order. No man would undertake such an astounding proposition, to steal into a man's plant like that and get, perhaps, his records, steal them from him, for all we knew; because Lewis does charge that these records were taken bodily from his place and transported here to Washington.

Mr. AUSTIN. You are claiming he sent them there; I thought possibly you had some public records.

Mr. MADDEN. What I put down here I can back up to the hilt.

Mr. BRITT. Will you be kind enough to again read that statement containing the Postmaster General's direction in regard to the clerks?

Mr. MADDEN. Yes. [Reading:]

I desire that Mr. Fettis—

That was the chairman—

Mr. MCCOY. Of the commission?

Mr. MADDEN. Of the commission.

Be emphatically reminded that it is his duty to obey instructions and not make comments thereon, particularly to persons whom he is investigating; that he shall, as was contemplated in my previous instructions, assume direction of the clerks referred to; that their investigation be made a part of the investigation being carried on by him—

He was working for me to determine this question.

That the information so obtained be transmitted daily to you—

As if it were for me, mind you—

by Mr. Fettis, and I desire that it be by you promptly transmitted to me. Mr. Fettis should not disclose to Mr. Lewis the information thus obtained.

Mr. AUSTIN. Had Mr. Fettis been talking too much?

Mr. MADDEN. I did not know that he was. I do not see what secret there ought to be about a count.

Mr. AUSTIN. The opening words there would indicate that he had been getting imprudent.

Mr. MADDEN. I think the inspectors' and Mr. Cortelyou's whole attitude was that the administration of the Post Office Department was a secret matter; that it had to be behind closed doors.

Mr. MCCOY. Is it not to be inferred that the talk of Mr. Fettis, which the Postmaster General referred to, was the answer which Mr. Fettis made to Mr. Lewis's inquiry that he, Mr. Fettis, was not having these men work under him?

Mr. MADDEN. Yes; I think that was it.

Mr. MCCOY. Is it not to be inferred that is what the Postmaster General refers to?

Mr. MADDEN. I think so.

Mr. MCCOY. I do not see anything else in the evidence disclosed so far which indicates that Mr. Fettis, or whatever his name is, has been talking.

Mr. AUSTIN. I was wondering how the Postmaster General knew anything about it.

Mr. MCCOY. Because in a letter which Mr. Lewis wrote to Mr. Madden, a letter of complaint, Mr. Lewis states that he has inquired of Mr. Fettis who these men are, and Mr. Fettis says he does not know; that they are not working under him.

Mr. AUSTIN. That does not disclose any information or knowledge having reached Mr. Cortelyou, the Postmaster General.

Mr. BRITT. It goes to the question of his talking.

Mr. AUSTIN. Yes; and that letter from Mr. Lewis got into the hands of the Postmaster General, you say?

Mr. MADDEN. I sent it to him.

Mr. MCCOY. There may have been a lot of talk; but on the record as it stands now the only talk Mr. Fettis had been indulging in was a reply to Mr. Lewis's inquiry.

Mr. MADDEN. That is all.

Mr. MCCOY. Are you through with that?

Mr. MADDEN. I am through with the letter.

Mr. MCCOY. I want to ask you a question there. The Postmaster General, in this communication to you, makes use of the words "previous instructions." What, in your mind, does he refer to?

Mr. MADDEN. That I am entirely in the dark about; I do not recall or know anything about any previous instructions at all.

Mr. MCCOY. Had you received any previous instructions to have any inquiries made, except through this commission which you appointed?

Mr. MADDEN. No, sir.

Mr. MCCOY. And the previous instructions which you had given to this commission were to make this count in the method which you have described by examination of the original subscriptions of the subscribers?

Mr. MADDEN. Yes, sir.

Mr. MCCOY. And aside from anything that I have mentioned now, you do not know of any previous instructions to either Mr. Fettis's commission or to you?

Mr. MADDEN. No; I do not recall any.

Mr. McCoy. And you do not know anything about instructions of any kind to these other men who were working there and about whom Mr. Lewis complained?

Mr. MADDEN. No, sir.

On June 28 the first package containing the results of the work of these men was received by the Third Assistant.

Mr. McCoy. That was after the Postmaster General had written you this letter above here in regard to previous instructions?

Mr. MADDEN. Yes, sir.

Mr. McCoy. The first package from Mr. Fettis?

Mr. MADDEN. From Mr. Fettis.

The CHAIRMAN. And after you had wired him?

Mr. MADDEN. I had wired him in accordance with those instructions.

Mr. BRITT. But you had no instructions not to examine what you received, from any source whatever?

Mr. MADDEN. If you could understand any permission in that letter to examine, I would like to see it.

Mr. BRITT. Would you infer from the fact that the Postmaster General had directed that this report should be made through you, and placed upon it no injunction or inhibition against examination, that you were not to be permitted to see what these men reported?

Mr. MADDEN. I would, sir; and most especially under the circumstances of this case.

Mr. BRITT. Why would he send them through you?

Mr. MADDEN. That is what I want to show.

Mr. BRITT. If the Postmaster General desired that the findings of this commission, or a part of them, be kept from you, does it stand to reason that he would direct that they be sent to him through you, as one of his subordinates, when you state that at no time did you ever receive any instructions not to examine them as you pleased, nor was any instruction given that they should be sealed so as not to be opened to your inspection?

Mr. MADDEN. Permit me to go on a little further with the record, and I will show you that that sending to me was to complete the deception of Lewis.

Mr. BRITT. No; you want to tell me your inference. I want the facts.

Mr. MADDEN. I am not; I will prove my inferences in a minute or two.

Mr. BRITT. Give me facts.

Mr. MADDEN. I will give you another letter where, after the deception was complete and Lewis subsided in his protests, then the Postmaster General wrote me, under date of July 6, following this, and said: "Tell Mr. Fettis to hand those packages of work directly to the postmaster and the inspectors, or both"—I do not know which; so that the sending to Washington to me to be transmitted to the Postmaster General was to complete the deception of Lewis.

Mr. BRITT. Did the Postmaster General direct that you should hold them for any specific time before you forwarded them to him?

Mr. MADDEN. No, certainly not.

Mr. BRITT. But you did forward them at once?

Mr. MADDEN. At once. [Reading:]

On June 28 the first package containing the results of the work of these men was received by the Third Assistant. He transmitted the package unopened with a memorandum to the Postmaster General. The packages came daily. All were so transmitted.

Mr. MCCOY. Let me ask you right there; that was after July 6?

Mr. MADDEN. No; I have just come to the July 6 matter.

Mr. AUSTIN. That was June 26.

Mr. MADDEN. That was June 26 the first package, came in and they kept coming in then every day.

Mr. MCCOY. And all the packages as they came in were transmitted unopened to the Postmaster General?

Mr. MADDEN. Yes; with a memorandum.

Mr. MCCOY. Are you going to disclose whether or not it is a fact that he sent any part of the contents back to you?

Mr. MADDEN. No; he did not send any back to me.

Mr. MCCOY. He did not send any back to you at any time?

Mr. MADDEN. No, sir.

Mr. MCCOY. They all remained in his possession?

Mr. MADDEN. Yes, sir.

Mr. MCCOY. Did the Postmaster General at any time comment to you, or to anyone, so far as you are informed, on the fact that you had transmitted these unopened?

Mr. MADDEN. No, sir. I would like to say, in that connection, something that I have not got here in the record. When I received that letter of June 23 from the Postmaster General, instructing me to carry out this deception by means of having my men cover up this secret inquisition, it was about 5 o'clock in the afternoon, when his messenger handed it to me. I read it, and while I have heretofore spoken of my suspicions, and all that, of what was going on, I was astounded; I could not believe that Mr. Cortelyou meant that. I thought he must have been mistaken, or he had signed the letter prepared for him by some one else without considering what it really meant. I called his office on the telephone and asked his private secretary to get an interview for me right away, and I went right over and placed the letter before Mr. Cortelyou and said, "Mr. Cortelyou, do you really mean to have such a thing as that done?" He looked at the letter again, and he said, "I have considered the matter thoroughly; I want my orders carried out." That was his answer; and I walked out, astounded that it had ever become possible, in a country like this, that a man capable of such a thing as that should become Postmaster General.

Mr. AUSTIN. I think he can give a satisfactory reason for doing that.

Mr. MADDEN. Let him give it.

Mr. MCCOY. There was no further conversation at that time?

Mr. MADDEN. None whatever.

On July 6 the Postmaster General again wrote the Third Assistant on the subject of this secret inquisition. The following is from his letter.

Mr. AUSTIN. Is that a part of his letter?

Mr. MADDEN. Yes; the whole letter will go in the record. This is all but the address and the signature.

Mr. AUSTIN. Is it?

Mr. MADDEN. Yes, sir; all but the address and the signature.
[Reading:]

Referring to your memorandum of the 23d ultimo—

I think that should be "my," but it does not make any difference—
in relation to the case of the Woman's Magazine—

Mr. McCoy. It would make a lot of difference whether it was
"your" or "my."

Mr. MADDEN. This is mine; I will explain that.

Mr. McCoy. How does it read?

Mr. MADDEN (reading):

Referring to your memorandum of the 23d ultimo.

That means this, that I promptly wired Mr. Fettis the effect of
that order of June 23d, and I transmitted to the Postmaster General
a copy of my instructions to Fettis

Mr. McCoy. And it is that to which he now refers?

Mr. MADDEN. Yes; I had forgotten that circumstance. [Reading:]

Referring to your memorandum of the 23d ultimo, in relation to the case of the
Woman's Magazine and the Woman's Farm Journal, of St. Louis, and in which you
advise me that you have instructed Mr. Fettis as follows:

"Assume charge of clerks working under your agreement with postmaster. Do
not change their duties. Cause them to report to you, but do not disclose informa-
tion they obtain. Send results of their work daily to me."

I desire that this work shall form a part of our general investigation in the case of
the two publications above referred to and that Mr. Fettis be instructed that hereafter,
instead of following the present procedure, he is to deliver the slips daily to the post-
master at St. Louis, who has been instructed to report to me personally from time to
time regarding them.

Again I say, this case was supposed to be in my hands a second
time April 14, 1906.

A copy of the memorandum, dated June 11, Postmaster General
to Third Assistant; a copy of the Postmaster General's letter of
June 23 to the Third Assistant; a copy of the memorandum, Third
Assistant to Postmaster General, June 28; and a copy of the letter
of the Postmaster General, July 6, all of 1906 and compared, are
submitted herewith, marked "Exhibit No. 22."

EXHIBIT No. 22.

JUNE 11, 1906.

THIRD ASSISTANT POSTMASTER GENERAL:

I have received information that Mr. Fettis has refused to longer allow the repre-
sentatives of the postmaster at St. Louis to take the names and addresses from sub-
scription lists of the Woman's Magazine and the Woman's Farm Journal, as had been
previously agreed upon between Mr. Fettis and the postmaster at St. Louis.

It is my desire that these clerks be permitted to continue taking these names in
the manner in which it has been heretofore done.

Please instruct Mr. Fettis to that effect.

GEO. B. CORTELYOU,
Postmaster General.

(Compared copy.)

JUNE 23, 1906.

SIR: Your memoranda of the 19th, 20th, and 22d instant, accompanied by letters
addressed to you by Mr. E. G. Lewis, president of the Lewis Publishing Co., of St.
Louis, under dates of the 16th and 19th instant, and also by copies of correspondence
between the Lewis Publishing Co. and Mr. Fettis and the postmaster at St. Louis in
regard to the investigation being made of the circulation of the Woman's Magazine and
the Woman's Farm Journal, have been received and carefully considered. Mr.
Lewis in his letter of the 16th instant complains that:

"For some two weeks past two clerks, working separately from the remainder of the clerks, and apparently under direct and continuous orders from the post-office inspectors, have been conducting a separate and independent investigation into our matters, receiving their instructions and reporting continuously throughout the day from and to the local post-office inspectors and Mr. Wyman the St. Louis postmaster."

And therein Mr. Lewis further says:

"We are informed by your Mr. Fettis that these men are not under his jurisdiction nor are they acting for him as a part of the present force under his charge, but that their investigation is a separate and independent one so far as he is concerned."

Mr. Lewis in his letter of the 19th instant advises you that these clerks have now been increased to eight men.

I desire that Mr. Fettis be emphatically reminded that it is his duty to obey instructions and not to make comments thereon, particularly to persons whom he is investigating; that he shall, as was contemplated in my previous instructions, assume direction of the clerks referred to; that their investigation be made a part of the investigation being carried on by him; that the information so obtained be transmitted daily to you by Mr. Fettis, and I desire that it be by you promptly transmitted to me. Mr. Fettis should not disclose to Mr. Lewis the information thus obtained.

Very respectfully,

GEO. B. CORTELYOU,
Postmaster General.

HON. EDWIN C. MADDEN,
Third Assistant Postmaster General.

(Compared copy.)

[Memorandum for the Postmaster General.]

JUNE 28, 1906.

Referring to your letter of June 23, in the case of the publications *The Woman's Magazine* and the *Woman's Farm Journal*, I beg to say that I am this morning in receipt of the first installment of the work of the persons engaged in the investigation, the control of whom was assumed by Mr. Fettis, under instructions transmitted by me according to your directions. The package was received in bad order. I have not opened it, and I do not know whether the contents are intact. Should it be found that there is inclosed therewith any communication covering that feature of the work handled by the Third Assistant Postmaster General, will you be kind enough to cause it to be returned to me.

Very respectfully,

EDWIN C. MADDEN,
Third Assistant Postmaster General.

(Compared copy.)

OFFICE OF THE POSTMASTER GENERAL,
Washington, D. C., July 6, 1906.

HON. E. C. MADDEN,
Third Assistant Postmaster General.

SIR: Referring to your memorandum of the 23d ultimo, in relation to the case of the *Woman's Magazine* and the *Woman's Farm Journal*, of St. Louis, and in which you advise me that you have instructed Mr. Fettis as follows:

"Assume charge of clerks working under your agreement with postmaster. Do not change their duties. Cause them to report to you, but do not disclose information they obtain. Send results of their work daily to me."

I desire that this work shall form a part of our general investigation in the case of the two publications above referred to, and that Mr. Fettis be instructed that hereafter, instead of following the present procedure, he is to deliver the slips daily to the postmaster at St. Louis, who has been instructed to report to me personally from time to time regarding them.

Very respectfully,

GEO. B. CORTELYOU,
Postmaster General.

(Compared copy.)

No effort is here made to characterize this deception which the Postmaster General practiced on the publishing company. The records speak for themselves. According to the Constitution, the

people are guaranteed security in their papers and effects against unreasonable searches, and searches are authorized to be made only upon warrant issued upon probable cause, etc.

Note how artfully the thing is done. The company's books and papers had been thrown open to the Third Assistant's commission. Practically, it has possession of the company's offices. The chairman of the commission is required to assume charge of these secret agents as if they were part of the 60 clerks working for him. In that way access is gained to the books and papers of the company. The sealed reports, to keep up the deception, are handed to the chairman of the commission. Lest the fraud be noticed, the reports are forwarded by the chairman to the Third Assistant at Washington. Now, on July 6, the company has subsided; it has ceased to notice and to protest. There is a change of plan. Instead of sending the work of these secret agents to the Third Assistant at Washington to be handed to the Postmaster General it is turned over to the postmaster at St. Louis, who is instructed to report to the Postmaster General "personally from time to time regarding them." But what is all this for? In the administration of what postal law are such things required?

Mr. McCoy. How could the transmission direct to you by Mr. Fettis of the information gotten in this way deceive Mr. Lewis?

Mr. MADDEN. Lewis had protested—

Mr. McCoy. I am speaking about the mere transmission.

Mr. MADDEN. Because Lewis would probably count all his clerks there, and seeing the packages going out would notice that they were addressed to the Third Assistant.

Mr. McCoy. That is the very point; how would Mr. Lewis know that the packages were addressed to you?

Mr. MADDEN. I do not know how he would know; I could not tell that.

Mr. McCoy. Do you know that he did know?

Mr. MADDEN. No, I do not.

Mr. McCoy. That would be a matter for you to bring out from Mr. Lewis. Let us find out whether Mr. Lewis was actually deceived.

Mr. ARSTIN. Then you ask him what he bases his statement on about this deception?

Mr. McCoy. That, of course, would lead to inferences, and I was simply seeking for facts. Mr. Madden can say, if he pleases; but I wanted to get a fact, if I could, as to just how Mr. Lewis could be deceived.

Mr. MADDEN. Whatever I have said in that respect I will amend to this effect, that, to my mind, that was the definite purpose of sending them to Washington, because they were undoubtedly forwarded right back from Washington to St. Louis.

Mr. McCoy. Of course, Mr. Madden, I do not want to criticize your presentation of the case, but do not forget that a man is at liberty, in summing up or in opening, whichever you please to call it, to make all the comments, draw all the inferences, that the facts will legitimately stand; but when the committee comes to consider this matter, it has to go on facts, aided by the summing up, and I do not think it appears clearly yet that Mr. Lewis was necessarily deceived in any way by the mere fact that these things were trans-

mitted to you as Third Assistant Postmaster General. The fact may be as you state; but I do not see it in the record.

Mr. MADDEN. That was my conclusion, from the methods employed, but maybe it is not justified, and I withdraw it.

Mr. McCoy. No; I did not ask you to withdraw it. I am not reflecting on you at all. I am only calling attention to the fact that the committee has to have facts and not inferences.

Mr. MADDEN. I could only give you an inference.

Mr. McCoy. The fact must be susceptible of proof, if it is a fact.

Mr. ALEXANDER. I take it he has studied this case more thoroughly than we have, and his inferences may be justified. I am not undertaking to say whether they are or not.

Mr. McCoy. Neither am I; and I say he is at liberty to draw any inferences he pleases. I do not care how strained they are. But I have no doubt if there is a subsequent summing up of this case, after the Government case is in, if you are going to ask the committee to find, as a finding of fact, that Mr. Lewis was deceived, I will say now, that, in my opinion, there is no evidence in the record that he was deceived.

Mr. MADDEN. I think you are right.

Mr. McCoy. It may be the fact that he was deceived; I do not want to criticize your inference, or anything of that kind, or suggest that you change your method of proceeding here; it is not that; and I do not say your inference is not justified from the facts you have stated. But I say it is only an inference.

Mr. MADDEN. That is all.

Mr. McCoy. There is no fact from which we can conclusively determine that Mr. Lewis was deceived.

Mr. MADDEN. No; my inference is not based alone on the circumstances in this particular, but many others that have been recited.

Mr. McCoy. Your inferences will all be drawn from the entire case, from one end to the other; but if you want the committee to find as a fact—and I have no doubt you want them, if you could get them, to find as a fact—that Mr. Lewis was actually deceived by this, you would have to have some proof of it.

Mr. MADDEN. I do not care whether the committee finds that or not.

Mr. McCoy. Then you should not have taken the time of the committee in putting it before us.

Mr. ALEXANDER. Deceived in what, Mr. McCoy?

Mr. McCoy. The point is this: Here is an investigation going on under Mr. Madden by means of a commission. He says that he sent that commission out there to make a count of certain subscriptions. That was all right, and that was the limit of his instructions. Mr. Lewis discovers that there are some other men there doing some other kind of work, and he asks Mr. Fettis, chairman of the commission which Mr. Madden had sent out, what the work was, and Mr. Fettis says, "I do not know." Mr. Madden says that they were doing some other kind of work not included in his orders. While that is the situation, the Postmaster General says, "Let these men go on and do the work which they are doing," which was not the work which he required them to do. The Postmaster General further says, "Have those men"—not commissioned by the Third Assistant Postmaster General—"report through the Third Assistant Postmaster

General," and by means of a communication from Mr. Fettis; is that his name?

Mr. MADDEN. Yes, sir.

Mr. McCoy. If it was the fact that Mr. Lewis saw the communications that came from Mr. Fettis to the Third Assistant Postmaster General, he was justified in drawing the conclusion that all these men, including the four or five or six other men, however many there were, were conducting an inquiry ordered by Mr. Madden; and that is what Mr. Madden says, if he saw that he would naturally be deceived. I will agree with you on that. But we have no evidence that he was deceived, because we do not know that he knew that those records were being transmitted to you. Now, I say the fact is not clear in any way, shape, or manner, and we might as well clear the matter up now, because if it is a fact it is an important fact. I do not know whether I make myself clear on that.

Mr. ALEXANDER. Suppose he was deceived; then what?

Mr. McCoy. I think it is important, if he was deceived.

Mr. ALEXANDER. In what respect?

Mr. McCoy. Because here was an investigation going on out there to count the subscriptions as shown by the original subscriptions, an investigation which Mr. Lewis was perfectly willing to have taken place. Here was another investigation going on out there by somebody else who was not counting the subscriptions, and maybe that was for the purpose of the indictment. Mr. Lewis, if he were deceived into thinking that that investigation by these ten or twelve other people was for the sake of the count, would not make any objection; whereas if he thought it was for the sake of the indictment, he would put a stop to it if he could. Is not that so?

Mr. MADDEN. Yes, sir.

Mr. ALEXANDER. These two clerks were there making investigations at the time the commission went there, and the numbers were simply increased.

Mr. McCoy. Let us assume that the numbers were increased, and they were making absolutely one kind on an investigation. It might possibly bring forth evidence that would be used against Mr. Lewis under the criminal indictments.

Mr. TOWNER. As reported by Mr. Lewis?

Mr. McCoy. However you please, but the evidence that they were getting might be used for that purpose, and it might be intended for that purpose.

Mr. AUSTIN. We can clear up that point later on when the Government puts evidence on.

Mr. McCoy. Judge Alexander was asking how that made any difference. It is Mr. Madden who is claiming Mr. Lewis was deceived. I just want to say now there is no evidence of that fact. Mr. Madden does not consider it important whether or not he was deceived, so we can cut the whole thing out. I am free to confess, I should say, that if Postmaster General Cortelyou, under guise of Mr. Madden's examination for the purpose of counting subscriptions, was making an examination to get evidence for criminal indictment, Mr. Madden's characterization of his conduct was justified.

Mr. ALEXANDER. Right at that point you have overlooked the fact that those two clerks were there in possession of the books, making

the investigation at the time the commission went to St. Louis and began the count.

Mr. MADDEN. I beg your pardon; you are mistaken about that. Let me say this, and I will clear that up. The commission left Washington for St. Louis about May 5; I do not say that is the actual date. After they got there they went over the situation to see what would have to be done, to see what kind of records they would have to count, etc., and they concluded they would need a large force. They applied to the postmaster for the force, and he refused, and there were several telegrams forward and back, and finally the Third Assistant's order was gotten to him to furnish the clerks. It was several days before he did so. Those clerks were furnished, and then they went to work. They were organized in little knots, to work on certain bunches of the work; and one was a check upon another, and so on. While these men were at work two new men showed up, and then six more new men showed up.

Mr. ALEXANDER. I understood the two men were there at the time the others went in.

Mr. MADDEN. No, sir; they came after.

Mr. MCCOY. I do not want to waste any time on it; I simply give you my views on the situation; that is all.

Mr. AUSTIN. They were there looking for testimony to sustain the criminal prosecution, or the Postmaster General was, for his own satisfaction, having an independent investigation made.

Mr. MCCOY. That may be. But if, under the guise of an investigation for a distinct purpose, which Mr. Lewis had consented to—I do not say he was or intimate he was—but if the Postmaster General was trying to deceive Mr. Lewis into thinking that these other people were working for that specific purpose, whereas they were working for something else, I should say it was reprehensible, if it was a fact.

Mr. AUSTIN. We will ask Mr. Cortelyou, who will be along here one of these days.

Mr. MCCOY. I am not prejudging in advance of taking the evidence, but simply giving my opinion on that point.

Mr. MADDEN. The record already shows that while these investigations were going on in St. Louis the local postmaster and the post-office inspectors were busy circularizing the postmasters of the country and the patrons of the publishing company. Copies of some of their letters are in the exhibits. Possibly this secret inquisition into the records and files of the company was in part to get the names and addresses of the company's correspondents for the purposes of the inquiries being made.

It is necessary at this point, in order to make the record complete, to state another incident which happened on the side. We turn back to May 14, 1906. Under that date the Third Assistant prepared, at his request, a "memorandum for the Postmaster General" on the subject of "illegitimate lists of subscribers and free circulation of stock journals." This matter has an important bearing upon this case, as will later be shown. The following is taken from that memorandum:

The following is submitted in response to your request for the information called for by the President under date of April 25.

Mr. AUSTIN. President who?

Mr. MADDEN. President Roosevelt, at that time.

Mr. AUSTIN. That is the first time he comes in this case.

Mr. MADDEN. That was in the record. I do not know whether the President was much concerned about it. I dealt with the Postmaster General. This matter comes up by reason of the progress of the work of correcting the abuses of the second-class mailing privilege. The publishers of stock journals are now and long have been trafficking in the special privilege accorded them by law, for the maintenance of which the general public is taxed. Their practice is a fraud upon the act. The copies sent out by them are the property of commission merchants—in effect circulars issued by them for advertising purposes. Under the law a postage rate at least four times as great should be paid. By the device of mailing them through the publishers the commission merchants evade the lawful postage charge.

The department has in the past endeavored to deal with this abuse by regulations, orders, and rulings, but for the most part they have not been effective. In one way or another they have been evaded, or the publishers were able to see to it that they were not enforced.

As far back as 1879 the copies of these publications now in dispute were sent out by the publishers at the pound rate as alleged sample copies. Then, as now, they were paid for and were the property of commission merchants. * * *

There is no doubt whatever of the right of publications devoted to the live-stock industry to enjoy the second-class rates, provided they comply with the law. This is a case of certain alleged newspapers said to be devoted to that industry which have lists of subscribers not "legitimate" as specifically required by the statute.

This means that there was a large class of publications in the country known as stock journals which had never from the first complied with the statute in the matter of having legitimate lists of subscribers, and without which they were not lawfully entitled to come in or to continue in the second class.

Substantially, these journals were the stock market reports or quotations from the various localities where they were issued. One of these journals was issued in every place where there was a stock market. The copies, instead of being subscribed for on their merits, by the persons to whom sent, as in the case of other publications, were sold in bulk quantities to the stock commission merchants in the same locality. The commission merchants sent the copies to their patrons and prospective patrons among the stock raisers of the country. This was to advertise the market in that locality and draw the trade of the stock raisers. But the commission merchants sent the lists of their patrons and prospective patrons to the publishers, who sent the copies to the names and addresses furnished at the cent-a-pound rate of postage, as if the persons were subscribers. The wrong was of two kinds; first, the gaining of the second-class rating and keeping it for publications which did not comply with the law in having legitimate lists of subscribers; second, abusing the publishers' privilege by selling the cent-a-pound rate to the deprivation of the Government of its legitimate revenue, under the statute quoted, which requires that postage on copies sent by "others than the publisher" (the commission merchants acting through the publishers should pay the rate of 1 cent for each 4 ounces or fraction. The cor-

rectness of the rulings in Circular XXV in this particular had, in test cases, received judicial approval.

Mr. AUSTIN. That is one of the very statements of the St. Louis postmaster, that that was the way the Lewis publication was securing subscribers.

Mr. MADDEN. That is not in the record.

Mr. AUSTIN. A business man or firm would take an advertisement in Lewis's paper, and he would be given the privilege of mailing so many hundreds or thousands of copies of the paper to parties whose names would be furnished the publishing house by the said advertiser, business man, or corporation; is that similar to the way the stock-exchange journals secured subscriptions?

Mr. MADDEN. No, sir; quite different. If you care to have it explained now——

Mr. AUSTIN. I just simply stopped to ask you the question, if it was not a similar case.

Mr. MADDEN. No, sir; not this kind of a case.

Mr. McCoy. When is that going to be explained, that question that Mr. Austin asked? Do you propose to explain that later on?

Mr. MADDEN. Yes, sir; it will come in, not only in my case here, but it will come in the examination of witnesses generally, and be made clear.

The department has been endeavoring to correct this abuse and protect its revenue since the enactment of the law in 1879, but the publishers had been able by some device to evade the rules made from time to time, or to prevent their enforcement against them.

Circular XXV was the effort of the Third Assistant to finally reach and correct this abuse. The stock journals were, as all others, to be compelled, if they were to continue in the second class, to observe the law by having legitimate lists of subscribers, or they were to be reclassified as third-class matter. If they remained in the second class, the publishers were to cease trafficking in their publishers' privilege to mail at a cent a pound to the detriment of the revenues of the department.

The publishers, fearing the effect of Circular XXV, had sought the Postmaster General in April. The Third Assistant furnished him the memorandum from which the quotation which has been read was taken on May 14. On July 9 following the Postmaster General directed the Third Assistant to suspend the operations of Circular XXV, in so far as it affected the stock journals. The influence of the publishers was again great enough to defeat the law, and deprive the department of its legitimate revenue.

The purpose of bringing this matter into this case here is to emphasize the immorality of the treatment of the Lewis Publishing Co.

There was no lawful power to suspend the law in the case of the stock journals and grant them immunity from its requirements, not only to the detriment of the revenue, but to the detriment of efficient, impartial, and uniform administration. But the Postmaster General did this very thing, and he did it at the very time he was exacting the most rigid compliance with the very same requirement by the Lewis Publishing Co. He did this thing, too, at the very time he was causing the indictment of the company's officers, not for not having lists of subscribers, but for not having lists that were large

enough, according to the ruling he was applying through the St. Louis postmaster.

In the St. Louis postmaster's letter of April 23, which has been read, it is admitted that there were for one of the Lewis magazines 539,000 legitimate subscribers and for the other 141,000 legitimate subscribers. They were exacting excess postage (the rate for "other than the publisher") on some portion of the copies mailed by the company because, according to the alleged count of the St. Louis postmaster, the lists of subscribers did not equal half the outgoing copies, the law, as a matter of truth, all the while giving the company an unlimited privilege, and the company having repeatedly proposed to correct any practice it was following upon information that it was irregular or improper.

It is not charged that the publishing company was trafficking in its privilege. All the copies it mailed were on its own account.

A compared copy of the memorandum of the Third Assistant to the Postmaster General, dated May 14, 1906, and a compared copy of the order of July 9, Third Assistant to the chief of the classification division, to suspend Circular XXV as to stock journals, "approved" by the Postmaster General, are submitted herewith as Exhibit No. 23.

EXHIBIT No. 23.

PLAINTIFF'S EXHIBIT R.

MAY 14, 1906.

[Memorandum for the Postmasters General.]

Subject: Illegitimate lists of subscribers and free circulation of stock journals.

Gen. CORTELYOU:

The following is submitted in response to your request for the information called for by the President under date of April 25.

This matter comes up by reason of the progress of the work of correcting the abuses of the second-class mailing privilege. The publishers of stock journals are now and long have been trafficking in the special privilege accorded them by law, for the maintenance of which the general public is taxed. Their practice is a fraud upon the act. The copies sent out by them are the property of commission merchants—in effect circulars issued by them for advertising purposes. Under the law a postage rate at least four times as great should be paid. By the device of mailing them through the publishers the commission merchants evade the lawful postage charge.

The department has in the past endeavored to deal with this abuse by regulations, orders, and rulings, but for the most part they have not been effective. In one way or another they have been evaded, or the publishers were able to see to it that they were not enforced.

As far back as 1879 the copies of these publications now in dispute were sent out by the publishers at the pound rate as alleged sample copies. Then, as now, they were paid for and were the property of commission merchants. The following regulation was issued to correct the illegal practice:

"Extra numbers not sample copies.—Publishers will not be permitted, however, to use the exceptional advantages given to them by the law so as to defraud the Postal Department by mailing as sample copies extra numbers of their publications ordered by advertisers or by campaign committees or by other persons to be sent to specified addresses, and apparently intended, from the nature of the contents or marked portions thereof, to serve the business, political, or personal interests of the person or persons ordering the same. Such copies are third-class matter, and must be prepaid by stamps at the rate of 1 cent for each 2 ounces or fractional part thereof."

This was not effective. Some of the publishers discovered that if the copies were sent out as alleged subscribers' copies, and not as samples, the regulation would be ineffective, and that plan was adopted. However, some continued to send the copies

out as samples. To meet this condition the following two regulations were issued, the first in 1893 and the second in 1894:

"Postmasters must require satisfactory evidence that publications offered for mailing at the pound rate have a legitimate list of subscribers, made up, not of persons whose names are furnished by advertisers or by others interested in the circulation of the publication, but of those who voluntarily seek it and pay for it with their own money, although this rule is not intended to interfere with any genuine case where one person subscribes for a limited number of copies for another."

"Extra numbers of a second-class publication sent by the publisher thereof, acting as the agent of an advertiser or purchaser, to addresses furnished by the latter, are not sample copies, but are held to be subject to postage at the rate of 1 cent for each 4 ounces or fraction thereof, the same as if mailed by the advertiser or purchaser himself; and where a publisher issues a large edition of a periodical containing an article or articles obviously intended to advance private interests, and circulated directly or indirectly through some arrangement with the parties concerned, or where the periodical contains advertisements secured under an offer or agreement to distribute a given number of copies in excess of the number of subscribers, the extra copies so issued shall not be regarded as sample copies, but as copies sent out in behalf of the advertisers or other parties interested, and therefore subject to postage at the rate of 1 cent for each 4 ounces or fraction thereof sent to a single address."

For a time there was an effort to enforce these rules, but the department yielded to the influences against it. Now the publishers realize that the department is in earnest and intends to enforce the law against all frauds and illegal practices. In his letter of April 27, addressed to the President, Mr. Donovan says:

"At every large live-stock and packing center in the United States there is a live-stock paper giving in detail the market each day at that particular place, and the market of the world in a more condensed form. These papers deal with the matters most vital to the farmers and the stock feeders and furnish them with information that the general newspapers do not contain; this information bearing on the products of the farm and the market for the same, and guiding the reader as to the time for shipment, etc. Some of the leading items of telegraphic news are printed in these papers and especial attention is given to the results of such experiments by the Agricultural Department as would interest the farmers. General advertising is done in the papers, but the bulk of it is done by breeders of fine stock of all kinds, who have stock for sale for breeding purposes, and by parties manufacturing stock goods, remedies, etc. These live-stock papers are sent, in many instances, to their readers by live-stock commission firms doing business at the various live-stock markets, and it is this fact more than any other that has brought about the present complications."

If the publications are of the value claimed to the stock raisers, why do not the publishers lay the merits of the publications before them and allow each person to make his own selection and determine for himself whether he is a subscriber, instead of forcing the publication upon him? That is the lawful way; it is what other publishers do and it is all the department asks. As it is, one stock raiser may receive half a dozen different stock journals from different publishers, for no one of which has he given an order to the publisher; all are sent him for advertising purposes and at the Government's expense, the people being taxed to maintain the service.

There is no doubt whatever of the right of publications devoted to the live-stock industry to enjoy the second-class rates, provided they comply with the law. This is a case of certain alleged newspapers said to be devoted to that industry which have lists of subscribers not "legitimate" as specifically required by the statute; moreover, they seem to come within the prohibition of the statute quoted below, for there is evidence that they are "designed primarily for advertising purposes" and there can be no doubt at all that primarily they are "for free distribution."

"It must be originated and published for the dissemination of information of a public character, or devoted to literature, the sciences, arts, or some special industry, and having a legitimate list of subscribers; provided, however, that nothing herein contained shall be so construed as to admit to the second-class rate regular publications designed primarily for advertising purposes, or for free circulation, or for circulation at nominal rates."

You have directed me to take no action on this class of abuses until you advise me and nothing will be done.

Respectfully submitted.

EDWIN C. MADDEN,
Third Assistant Postmaster General.

[Memorandum.]

Mr. BACON: I return to you herewith for your files my memorandum of May 14, 1906, to the Postmaster General on the subject: "Illegitimate lists of subscribers and free circulation of stock journals;" that is to say, the alleged subscriptions of commission merchants for their patrons.

In accordance with the Postmaster General's request, I have had an interview with him on this subject. He has decided that as Congress has authorized a commission to look into the whole subject of second-class mail matter and its abuses that the provisions of Circular XXV are not to be enforced against the illegitimate lists of subscribers and free circulation of stock journals. It is the intention to suspend Circular XXV in other particulars, and you will be further advised. In the meantime, therefore, you will let this question stand.

EDWIN C. MADDEN,
Third Assistant Postmaster General.

Approved July 9.

GEO. B. CORTELYOU, P. M. G.

While these matters were going on in 1906, Congress was in session. The Third Assistant, finding that uniform and impartial administration was broken down, appealed to the Postmaster General to recommend that Congress appoint a commission to consider the whole subject of second-class mail matter, with a view to enacting a new law for matter of that class, and that the reform work be suspended until the congressional commission reported and Congress acted on the report. The Postmaster General agreed.

The Third Assistant prepared a communication for the committees in the House and Senate, and the Postmaster General signed it. Congress responded. Three Senators and three Members of the House were appointed. The Postmaster General then commissioned the Third Assistant, under date of July 14, 1906, to represent the department before the commission.

Mr. McCoy. Mr. Cortelyou appeared before that commission himself, did he not, at one time?

Mr. MADDEN. Later; yes, sir. [Reading:]

(A compared copy of the Third Assistant's authority is submitted, marked Exhibit No. 24.)

EXHIBIT No. 24.

OFFICE OF THE POSTMASTER GENERAL,
July 14, 1906.

[Memorandum for the Third Assistant Postmaster General.]

The Postal Commission authorized by Congress to investigate, consider, and report upon the second class of mail matter has organized and fixed the time for its first hearing October 1 next, at the Holland House, New York. The commission has formally requested that this department be prepared to present at such hearing the case against existing statutes in relation to that class of mail matter; and that the presentation be accompanied by a complete set of exhibits with the necessary explanations and comments; also that this department be prepared to make such further explanations in response to inquiries of the individual commissioners as may be necessary to make the situation clear.

If practicable, I shall attend the meeting; but you should prepare yourself to present the case as requested. Also please arrange to accompany the presentation with such exhibits as may be necessary to make the situation plain. In addition, please be prepared to make such further explanations in connection with any phase of the subject as the individual commissioners may desire, to the end that there shall be a thorough presentation and practical demonstration, not only of the administrative situation but of the effect of existing laws upon the service. It is also my desire that you so arrange your business as to be able to respond to any calls or requests of the commission in connection with the prosecution of the work for which it was created.

GEO. B. CORTELYOU, *Postmaster General.*

Manifestly, under ordinary circumstances——

Mr. AUSTIN. Tell us why you jumped from this commission you had in St. Louis into this other matter. Do you follow that up?

Mr. MADDEN. You mean the stock-journal matter?

Mr. AUSTIN. No; I mean your commission that you sent out to St. Louis. You started in to tell us all about that.

Mr. MADDEN. That is followed up later. These matters break in here because of their connection.

Manifestly, under ordinary circumstances, it was morally right to suspend the reform of the second-class abuses, if Congress was to consider the subject and possibly enact a new law as recommended. But this was doubly true, under the unusual circumstances which existed. It would not do to ruin an enterprise by putting its publication out of the second-class, even in so flagrant a case as the stock journals, while there was a possibility that a new law, if enacted, would provide for just such publications and conditions. The new statute was certain to be more liberal than the old. The changed conditions in the publishing world required it, and the publications had been running for years under the old law with the implied sanction of the department.

In the interest of clearness, a personal explanation is here required. After the appointment of this congressional commission, and the Third Assistant to represent the department before it, I made those circumstances an excuse to apply to the Postmaster General to take the case of the Lewis Publishing Co., which he sent to me April 14, out of my hands. Although the reform work was now suspended as to all others, I was morally certain that there would be no abatement of the campaign against this company. The Postmaster General refused to relieve me. He said: "You must act in that case."

As the first duty of the Third Assistant must now be to the congressional commission, and it would take months of his time, it would be unfair to require the company to continue indefinitely to deposit cash in trust with the postmaster to cover the postage on alleged excess mailings. The company was entitled to a reasonably prompt decision. It will be understood that with each new mailing a new deposit was required. By this time something less than \$30,000 had been deposited.

It was now arranged that because of the time which would elapse before there would be a decision on the appeal, that in lieu of depositing cash, the company might file a bond with the postmaster to cover the alleged excesses for the probable mailings of the magazines before a decision could be expected. A \$50,000 bond was filed.

The Third Assistant did not finish his work with the congressional commission until late in December, 1906. The commission did not report to Congress until some time later. The post-office commission to count the subscriptions in St. Louis did not render its report until January, 1907.

That is the special commission I sent out.

Compared copies of its reports, one on each magazine, are submitted herewith, marked Exhibits Nos. 25 and 26.

EXHIBIT No. 25.

WASHINGTON, D. C.,
January 3, 1907.

HON. EDWIN C. MADDEN,
Third Assistant Postmaster General.

DEAR SIR: Pursuant to your letter of instructions of May 3, 1906 (Exhibit 1), which was supplemented by your further instructions of May 24 (Exhibits 2 and 3) and June 15, 1906 (Exhibit 4), to make an investigation of and report to you upon the circulation and number of subscriptions to the periodicals entitled "The Woman's Magazine" and "The Woman's Farm Journal," published by The Lewis Publishing Co. at St. Louis, Mo., we have the honor to submit the following report and accompanying documents, each designated by number as an exhibit.

We arrived in St. Louis Sunday, May 6, 1906. On May 7 we proceeded to the office of The Lewis Publishing Co. and commenced the investigation.

In accordance with the direction contained in your letter of May 3, The Lewis Publishing Co was informed by letter (Exhibit 5) in advance of the actual count of the

subscription orders that the company was at liberty to be represented throughout the investigation by such representatives as it deemed best. The following-named persons were designated for that purpose: Walter B. Stevens, F. J. Cabot, H. C. Ambrose, J. Collins Thompson, jr., F. V. Putnam, A. P. Coakley, and W. E. Miller.

I.

ORGANIZATION OF ASSISTANCE.

The working force under our supervision consisted of clerks and watchmen detailed from the St. Louis post office and a stenographer from the division of classification of the Post Office Department. The first detail of such clerks, 20 in number, reported to us for duty on May 16, 1906. The force was increased from time to time until it reached the maximum number of 68. The names of the persons composing the same and the nature of their employment are set forth in Exhibit 6. The force was organized into four sections, each under the immediate supervision of a member of the commission.

II.

SYSTEM OF THE LEWIS PUBLISHING CO. IN HANDLING SUBSCRIPTIONS.

The mail relating to the publications averages from 200 to 5,000 letters each day and is opened by a force of girls. The remittances are sent in postage stamps, currency, coin, express and post-office money orders, and bank checks. The mail of each publication is opened and kept separately. The mail openers extract the remittances and throw them promiscuously into a box, laying aside the subscription orders according to their classes. These orders are received in the form of letters, coupons clipped from issues of the publications (Exhibit 7), subscription blanks (Exhibit 8), which are inclosed with copies of the publications mailed to persons whose subscriptions have expired and agents' lists (Exhibit 9).

In cases where the letters do not bear the names and addresses of the subscribers, but are mere letters of transmittal, they are not retained, but are destroyed, the publisher stating that they serve no purpose and to retain them would unduly burden the files. The various kinds of subscription orders are then turned over to another force of girls who copy the names and addresses of the subscribers on cards like Exhibit 10. These cards, which bear merely the name and address of the subscriber and the date of expiration of the subscription, are filed in cabinets by States, cities, and towns and constitute the publisher's subscription list. Subscription orders which are renewals of former subscriptions are turned over to special clerks who search the subscription card files for the card bearing the name of the person making the renewal. This card, if found, is destroyed and a new card bearing the date of expiration of the renewed subscription is substituted therefor—that is to say, the expiration date is extended one year from the expiration of the old subscription if the new subscription be for that period (Exhibit 11). No data, however, is placed on the new card to indicate that the subscription is a renewal. In cases where it is not possible to find the subscription card for the former subscription, on account of misplacement or withdrawal because of the expiration of the subscription, the renewal order is regarded as an original subscription and is treated as such. The copies of the publication which may have been received by the subscriber between the old period of expiration and the date when such subscription was actually discontinued by the publisher are consequently not paid for by the subscriber. Although a notice appears in each issue of the publications that subscriptions which are not renewed will be discontinued promptly, this is not done. Expired subscriptions are discontinued only periodically (Exhibit 11). Neither are requests to discontinue at the expiration of the period paid for complied with when preferred at the time of making the subscription (Exhibit 12).

No date of receipt nor any other mark is placed upon the subscription orders to indicate when they are received by the publisher. The various classes of orders, after passing through the several departments of the publishing company, are tied in packages and stored in the basement of the publishing house, each package bearing simply the date when it was sent to the storeroom. Under this system certain orders received upon a given date may be sent to the storeroom the day following, while other orders received at the same time may not be sent to the storeroom for a week or more. For instance, the lists sent in by agents are in some cases retained a month before reaching the storeroom, and consequently a date far removed from the actual date of receipt of

the lists is placed upon the packages. It will thus be seen that there is no certain way of determining the date the orders were received by the publisher. That can only be approximated in a more or less uncertain way by the date the order was sent to the storeroom, or, of course, by the date, if there be one, placed upon the order by the remitter.

The amounts of the remittances for subscriptions are entered at the end of each day upon the books of the publishing company as receipts for subscriptions. A separate account is kept for each publication, but no individual subscription accounts are kept.

III.

COUNT OF ORDERS FOR SUBSCRIPTIONS.

The Lewis Publishing Co. turned over to us all the letters, agents' lists, and other orders in its possession, representing subscriptions received between January 1, 1904, and April 30, 1906, and also a few subscription orders received in 1903. The orders received between January 1, 1904, and December 31, 1905, were delivered intact in what was stated by the publisher (Exhibit 13) to be the packages in which they were returned to the publisher by a committee of citizens of St. Louis which had previously examined and counted them, and whose tabulated findings (Exhibits 14 and 15) were used by us as a basis in accordance with the provision to that effect in your letter of May 3.

(A) Method adopted in counting subscriptions.

In order to devise a system of counting the subscription orders and classifying them according to the kind of subscription, period for which made and date when received, a few representative packages of these orders were secured from the publisher. These were carefully examined and the fundamental divisions to be observed in the count determined upon. These divisions were as follows:

New annuals.

Renewals, annuals.

Subscriptions for more than one year.

St. Louis (25-cent subscriptions).

Canadian subscriptions.

Other foreign subscriptions.

Life subscriptions.

To be verified.

These divisions were themselves subdivided as follows:

Individuals at the full advertised price.

Paid for by others.

Six-cent clubs.

Five-cent clubs.

Other clubs.

In the classification "To be verified" were placed all claimed subscription orders which did not bear on their face evidence that they were such.

In order to tabulate these various classes of subscriptions, a package tally sheet (Exhibit 16) and three summary sheets (Exhibits 17, 18, and 19) were devised.

At the request of the publisher (Exhibit 20) that the contents of each individual package be kept intact, it was determined to so count the subscription orders as to comply with this request. The packages counted by the "citizens' committee" had each been numbered, and we followed the same system of numbering. After the subscription orders in each package were counted and recorded under their different classifications on the tally and summary sheets, the sheets were signed by the clerk or clerks making the count and then examined by a member of the commission. The total was then compared with the total found by the "citizens' committee" for the same package and if found to agree therewith or the variation did not exceed 10, the count was accepted as correct by ourselves and the publisher's representative. When there was a difference of more than 10, the package was recounted by another clerk or clerks, and if the same result was obtained, the package was then examined or again counted by a representative of the publisher. When a conclusion as to the correct number of subscriptions in the package was reached, the summary sheet showing such number was signed jointly by a member of the commission and a representative of the publisher.

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(B) *Number of subscriptions.*

The total number of subscriptions including expirations carried for a period of six and two-fifths months computed from the tabulated statement marked "Exhibit 21" is as follows:

Date.	Subscriptions.		
	Current.	Expirations.	Total.
Oct. 13, 1905.....	578,346	214,483	792,829
Oct. 31, 1905.....	576,802	198,632	775,434
Nov. 30, 1905.....	581,707	187,589	769,296
Dec. 31, 1905.....	603,477	175,494	778,971
Jan. 31, 1906.....	577,771	198,584	774,355
Feb. 28, 1906.....	559,812	224,492	784,304
Mar. 31, 1906.....	529,717	277,011	806,728
Apr. 30, 1906.....	527,891	292,747	820,638

Statements showing the computations in detail by which the above figures were obtained are marked "Exhibit 22."

The foregoing estimates are, as stated, based upon the number of subscriptions as classified in the statement marked "Exhibit 21," in which no separation is made of subscriptions for more than one year which fall under the headings "Canadian" and "To be verified," nor of subscriptions for more than two years under the heading "Exceeding one year." At the time of making the count and preparing the statement there appeared to be no necessity for making such separations. Such a subdivision of these classes was subsequently made and is shown in the statement marked "Exhibit 23." Proceeding, as we have in our calculations, upon the theory that the "Canadian" and "To be verified" subscriptions expire at the end of one year, and that those classed as "Exceeding one year" expire at the end of two years, we have in fact reduced (by not exceeding 3,000 in any one month) the number which the publisher was actually carrying.

As will presently be seen, the process by which is ascertained the number of subscriptions carried on a given date is very complicated, and would become much more so were the estimates based upon the classifications shown by Exhibit 23. In view of this fact and because of the comparatively small difference there would be in the total number in any month covered by the count, we have used the more general classification. However, data is available upon which to base a more accurate computation should this be at any time necessary or desirable.

The method determined upon to find the number of current subscriptions and subscriptions expired for a period of six and two-fifths months on a given date is best explained by citing a concrete case. For example, to find the number of such subscriptions on December 31, 1905, we took the following:

- (1) All new subscriptions received in 1905.
 - (2) All new subscriptions exceeding one year received prior to January 1, 1905.
 - (3) All renewals for one year current December 31, 1905.
 - (4) All renewals exceeding one year current December 31, 1905, received in 1904.
 - (5) All renewals exceeding one year current December 31, 1905, received in 1905.
- Items 1 to 5, inclusive, represent the current subscriptions.
- (6) All new subscriptions for one year received between June 20, 1904, and December 31, 1904, which are not renewed in the corresponding period of 1905.
 - (7) All renewals for one year which expired between June 20, 1905, and December 31, 1905.

Items 6 and 7 represent the expirations.

Renewals are not always made at the exact time the original subscription expires. Some renewals are made a month or two in advance, whereas some are not made until a month or more after the subscription has expired. It is obvious, therefore, that some subscriptions which were originally made during the period between June 20 and December 31, 1904, and which would be carried by the publisher on December 31, 1905, as "expirations" have been renewed during the year 1905, and would also be counted as renewals.

The following table, which is the result of an examination of 465 orders for renewals received during August, 1906, shows what number of months had elapsed between the time of making the original subscriptions and the time of renewal:

Date of original subscription.	Subscriptions.		Months elapsed before renewal.
	Number.	Per cent.	
November, 1905.....	19	4.1	9
October, 1905.....	14	3.1	10
September, 1905.....	36	7.8	11
August, 1905.....	167	36	12
July, 1905.....	68	14.5	13
June, 1905.....	32	6.9	14
May, 1905.....	27	5.8	15
April, 1905.....	58	12.5	16
March, 1905.....	26	5.6	17
February, 1905.....	10	2.1	18
January, 1905.....	5	1	19
December, 1904.....	3	.6	20
	465	100	.....

So it will be seen that of 12,374 renewals, which are counted as received during the month of December, 1905, 82.1 per cent, or 10,159, were originally made between June 20 and December 31, 1904, and if continued to be counted among the "expirations" still carried by the publisher, the same subscriptions would be counted twice. Therefore, when the renewal is made the original subscription ceased to be an "expiration" and becomes a "current renewal." This number therefore is deducted from the expirations.

Since some persons, as is shown by the above table, renew their subscriptions in advance of the expirations, it follows that some of the subscriptions counted as originally received in January, February, and March, 1905, were actually renewed before the expiration of a year, namely, in October, November, and December, 1905. These renewals do not become effective as such until the expirations of the original subscriptions, which does not occur until after December 31, 1905, and therefore should not be counted until after that date. If counted as an original subscription made in January and as a "renewal" made in November, the same subscription would be counted twice. To avoid this duplication it was necessary to deduct from the renewals received in the last three months of 1905, 2,780, which were originally made in the first three months of that year.

(C) *Kinds of subscriptions.*

(1) *Subscriptions not dated by the transmitter.*—The examination of the various classes of orders disclosed that many letters, agents' lists, coupons, and subscription blanks were not dated by the transmitter. In the absence of a date of receipt, the only evidence other than as heretofore stated to indicate when these subscriptions were made was the date placed on the outside of the package of these orders showing when they were filed in the storeroom. The agents' lists have no date line, and consequently few of them are dated by the agents. The orders sent in on coupons cut from issues of the publication bore a printed date of the issue. In many cases these coupons were clipped from copies of the publication issued several months prior to the date of the package in which they were found and in one case (Exhibit 24) as far back as 1899. Other exhibits of a similar nature, together with an explanatory letter of the publisher, are submitted (Exhibit 25). Many orders were upon subscription blanks bearing a hand-stamped date of the month and year of the issue of the publication with which they were inclosed, and in this case, as in the case of the coupons, were largely received many months remote from that date. When these coupons or blanks bore a printed or hand-stamped date corresponding to or not over one month prior to the date of the package in which found the subscriptions were accepted as being made at the time represented. Otherwise, they were classed as undated or dated prior to month preceding the date of the package.

Three methods were available for ascertaining the time when these classes of subscriptions were made. First, that of observing the incoming mail for a given period for the purpose of determining whether the proportion of undated orders received from day to day during that period was approximately the same as the proportion of undated orders found in the packages of subscriptions. Second, and this method was appli-

cable only to agents' lists accompanied with post-office money orders, was to examine the corresponding advices in the St. Louis post office. Third, to inquire of the persons whose names appeared upon the orders when they actually made their subscriptions. For the latter test a large number of names and addresses was taken from the several classes of the orders. Careful and thorough tests were made through the medium of each of these methods and the results thereof are stated in detail on pages 36, 37, and 38 of this report.

(2) *Subscriptions taken at the door.*—Many claimed subscriptions were found upon blanks filled in by the same persons. The publisher stated that these subscriptions were made in person by visitors to the publishing establishment during the World's Fair in 1904 for themselves or others, and that the names were written by a force of clerks who were stationed at the door for that purpose. The affidavits of the publisher and of several of these clerks are made Exhibit 26. It was impossible to ascertain with any degree of exactness the number of these subscriptions, since the persons who wrote the names were themselves in many cases unable to identify their own handwriting.

(3) *Subscription orders with the word "old" or "renewal" stricken out.*—Many orders were found bearing the word "old" or "renewal" through which lines had been drawn. The publisher explained that when an order purporting to be renewal of subscription was received, a search was made for the prior subscription card, and if such card could not be found, for the reason stated on page 4 of this report, the word "old" or "renewal" was then scratched out and the subscription treated as a new one.

Of 1,738 subscriptions purporting to be renewals received in the mail opened under our observation, it was found that 181, or 10.4 per cent, were not carried on the publisher's subscription list at that time, and therefore the word "old" or "renewal" was stricken out. The number and percentage received in this period as compared with other periods covered by our count are shown in the following table:

Period.	Total number of renewals.	Number with word "renewal."	Per cent "old" or stricken out.
June 25 to July 2, 1906.....	1,738	181	10.4
Apr. 1 to Dec. 31, 1904.....	88,984	30,993	34.8
Jan. 1 to Dec. 31, 1905.....	111,054	46,605	42
Jan. 1 to Apr. 30, 1906.....	54,575	16,720	30.6

(4) *To be verified.*—Included in this classification are mere lists of names (Exhibits 27 and 28) concerning which the publisher stated that when received they were accompanied by documents stating by whom sent and the amounts remitted, and that under his system these documents became separated from the lists or were destroyed in the manner described on page 3 of this report. In other cases the evidence of claimed subscriptions consisted merely of memoranda bearing the name and address of the alleged subscriber transcribed, the publisher stated, from documents ordering the subscriptions, but which related mainly to other departments of the publishing business or to other enterprises in which some of the officers of the publishing company were engaged, and that the different letters were retained in the files of these departments and concerns, incorporated in which were orders for 2,359 subscriptions (Exhibit 29). These, however, were not counted as subscriptions, it being presumed that they were counted and classed in the "To be verified."

(5) *Claimed subscriptions received through publishers and business concerns.*—Some subscriptions to The Woman's Magazine were received through publishers of other publications and through business concerns. (See Exhibit 30.) Information concerning these subscriptions will be found in special reports marked Exhibits 31, 32, and 33.

(6) *Subscriptions claimed on account of being subscriptions to other publications purchased by the publisher.*—For information concerning subscriptions purchased from Conkey's Home Journal, of Chicago, Ill., and from The New Empire, of Kansas City, Mo., which publications were merged in The Woman's Magazine, your attention is invited to Exhibits 34 and 35.

IV.

CASH RECEIPTS ON ACCOUNT OF SUBSCRIPTIONS.

The amount of cash receipts on account of subscriptions to The Woman's Magazine received from April 1, 1904, to April 30, 1906 (exclusive of \$8,000 entered under head "Special subscriptions to Woman's Magazine and Woman's Farm Journal" and called by the publisher "special subscription fund"), as shown by the books of the publisher,

was:

From Apr. 1 to Dec. 31, 1904.....	\$48, 116. 14
From Jan. 1 to Dec. 31, 1905, including \$2,083.30 entered under head "Defense fund".....	47, 867. 99
From Jan. 1 to Apr. 30, 1906, including \$109.85, entered under head "Defense fund".....	17, 520. 27

The amount of such receipts, as shown by the count of the subscriptions, is as follows:

From Apr. 1 to Dec. 31, 1904.....	\$34, 067. 85
From Jan. 1 to Dec. 31, 1905.....	50, 101. 04
From Jan. 1 to Apr. 30, 1906.....	15, 580. 20

In this connection your attention is invited to Exhibits 36 and 21.

The cash receipts entered under the head "Defense fund" are for claimed subscriptions made under the conditions set forth in Exhibit 37.

The large discrepancy between the cash receipts for the year 1904, as shown by the book of the publisher, and the count of the subscriptions is explained by the circulation manager of the Lewis Publishing Co. in the statement contained in the letter of the publishing company dated July 5, 1906 (Exhibit —), that of the agents' lists received in 1904, approximately 4,200, containing about 220,000 subscriptions, were returned to the respective agents to be used by them in obtaining the renewal of the subscriptions of the persons whose names appeared thereon. This statement is corroborated by the statement of Mrs. Ethel Fulton Lewis, the stenographer who returned such lists (Exhibit 39). Further corroborative evidence touching upon the return of these lists is found in Exhibit 40, which is a description of certain envelopes which were returned to the Lewis Publishing Co. as unclaimed and not called for, and which upon examination by us were found to actually contain agents' lists. It was also learned that the lists sent in by an agent named William F. Hallock, of Harrisburg, Ill., were returned to him.

(A) *Special subscription fund.*

The special subscription fund of \$8,000 entered on the book of the publisher under date of September 21, 1905, as receipts on account of "special subscriptions to Woman's Magazine and Woman's Farm Journal," is represented by the publisher to be a fund made up of amounts ranging from "ten cents to many hundreds of dollars," contributed by various people to pay for copies of The Woman's Magazine and The Woman's Farm Journal to be sent to such persons as the publisher might choose, or to be used in any manner deemed best (Exhibit 41). Among the papers of this exhibit are several copies of letters transmitting money to be used in the manner above indicated, and also the affidavit of Frederick Essen, who was receiver of the People's United States Bank, in which he states that in such capacity he received from time to time a considerable number of communications from stockholders and depositors of the bank and from holders of the personal certificates of E. G. Lewis with "directions from them to pay over to Mr. Lewis various sums on their account as contributions to a defense fund for the purpose of sending out copies of Mr. Lewis's publications to whomsoever he chose to send them to assist him in his fight in connection with his publications"; that no separate account of any sort was kept of these particular items, as their relation to him was identical with that of any other payment on account of the stockholders and depositors, but to the best of his knowledge and memory the total of such sums paid over to Mr. Lewis on account of such defense fund "amounted to several thousand dollars."

E. G. Lewis, president of the Lewis Publishing Co., stated (Exhibit 41) that on the receipt of these amounts he placed them to his personal account (they being sent to him personally), keeping only a memorandum thereof, which had been misplaced, until they totaled \$8,000, when (on Sept. 21, 1905) his personal check on the St. Louis County Bank, of Clayton, Mo., in favor of the Lewis Publishing Co. was drawn therefor. A copy of such check is among the papers comprising Exhibit 41, the original having been seen by each member of the commission. The indorsements on this check show that in the regular course of business it passed through the banking house of the Missouri Lincoln Trust Co. and the St. Louis Clearing House, and was paid by the St. Louis County Bank on September 23, 1905.

Of this fund the records of the Lewis Publishing Co. show that \$1,479.40 were used in sending copies of the Woman's Magazine as follows:

June, 1905, Issue, 48,544 copies.....	\$242. 72
July, 1905, Issue, 92,100 copies.....	460. 50
August, 1905, Issue, 60,090 copies.....	300. 45
September, 1905, Issue, 95,147 copies.....	475. 73

2,479.40

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It is further stated by the publisher that the names and addresses to whom such copies were sent were taken from cards containing names obtained from letter purchased for the purpose of sending sample copies; that such copies were, however, not marked "sample copy," the persons to whom sent being under the circumstances regarded as subscribers, and that a copy of only one issue was sent in this manner to each of such persons.

V.

ESTIMATE OF NUMBER OF SUBSCRIPTION CARDS.

The cards representing subscriptions carried by the publisher on July 13, 1906, were filed in 223 boxes on a floor of the publishing building occupied by over 100 girls who are constantly engaged in addressing the mailing wrappers of the publications. To have actually counted these cards would have occupied the entire force at our command several days and for that period have completely stopped the addressing of wrappers and have caused these 100 or more girls a loss of pay for a like period, since it would have been necessary in counting the cards with absolute certainty to have had them under our supervision all the time. It was therefore decided after careful consideration that the number of cards in the boxes could be quickly and accurately estimated by weighing them, and this was done upon new scales furnished by the firm which officially supplies scales to the Post Office Department. The entire force of employees on that floor, save those especially selected to assist us in handling the cards, was dismissed for that day. Preliminary to this the cards in several filing boxes (containing from 3,000 to 5,000 cards each) were actually counted and weighed, and the average weight of the cards therein ascertained. Using this average as a basis and weighing all the cards we arrived at a very close approximation of the number of cards in all the filing boxes. The result of the estimate is as follows:

	Number of cards.
Current subscriptions.....	524, 274
Subscriptions expired in February, March, April, or May, 1906....	179, 395
Subscriptions expired in December, 1905, or January, 1906.....	90, 838
Total.....	794, 507
The exchange list, cards for life, foreign and St. Louis subscriptions, and for subscriptions for two or more copies, are kept in separate files and the number thereof was ascertained by actual count, as follows:	
Exchange list.....	2, 303
Life subscriptions.....	605
Foreign subscriptions:—	
Current.....	349
Expired.....	466
	855
St. Louis subscription:—	
Current.....	349
Expired.....	966
	1, 315
Subscriptions for two or more copies.....	295
Total.....	5, 373
Grand total.....	799, 880

Statements in detail of these computations are set forth in Exhibits 42 and 43.

The necessity of reducing the weight to grains will be obvious when it is explained that the weight of the rubber bands alone in the 144 drawers of current subscription cards is equivalent to the weight of 2,265 cards, while the weight of the guides in the same drawers is equivalent to the weight of 20,337 cards.

Estimate of the number of copies of each issue mailed.

In order to ascertain the number of copies mailed of each issue from October, 1905, to May, 1906, inclusive, we examined the receipts issued to the publisher by the postmaster and the books of the postmaster in which the weights were originally recorded, and from which the receipts were made. The receipts and the books were found to

correspond. Using these records as a basis the estimated number of copies of each issue mailed at the pound rate as shown in Exhibit 44 is as follows:

Issue.	Copies.		
	Subscribers.	Samples.	Total.
October, 1905.....	852,034	603,181	1,455,215
November, 1905.....	986,588	531,676	1,518,264
December, 1905.....	1,127,898	345,080	1,473,588
January, 1906.....	1,182,854	317,818	1,500,672
February, 1906.....	1,176,921	312,489	1,489,360
March, 1906.....	1,138,868	360,426	1,499,294
April, 1906.....	1,184,291	292,286	1,476,587
May, 1906.....	944,928	543,701	1,488,629

Exhibit 44 also contains an estimate of the total number of copies printed and circulated of each of the above issues.

It is well known that paper of the kind used in printing The Woman's Magazine and The Woman's Farm Journal is not manufactured of an exactly uniform weight. Furthermore, the copies of the publication as they come from the presses are cut and trimmed on several machines, and frequently vary as to size after trimming. The variation in width or length between copies trimmed on different machines was found to be from one-sixteenth to three-eighths of an inch. A very slight fluctuation, due to either of these causes, will materially affect an estimate of the total number of copies, based on their weight. For instance, a variation of only one-tenth of an ounce per copy would have made a difference in the estimate of over 50,000 copies in the mailing of the May, 1906, issue. In estimating the average weight of a copy of a stated issue of the publication, due consideration had to be given to all these circumstances. This average was obtained by weighing, with wrappers, several copies (in no case less than 10) of each issue selected at random from the retained copies of the publisher. In this connection your attention is invited to the affidavits of A. P. Coakley, advertising manager, and J. P. Richarz, foreman of the pressrooms of the Lewis Publishing Co. (Exhibits 45 and 46.)

Concerning the reference on page 73 of the record of the hearing held before you on April 30, 1906, that it appears there were mailed on the October, 1905, issue of The Woman's Magazine, 651,155 copies to subscribers and 464,055 copies as samples, and of the November issue 1,553,425 copies to subscribers, and 96,310 samples, indicating that the subscription list was increased in a period of 30 days by 906,000, and the number of sample copies mailed decreased 377,000, your special attention is invited to the fact that the records of the St. Louis post office show that of the October issue there were mailed as to subscribers 143,682 pounds (estimated equivalent in copies 852,034) and 101,717 pounds (equivalent in copies 603,181) as samples, and of the November issue 213,086 pounds (986,588 copies) to subscribers, and 114,833 pounds (531,676 copies) as samples, indicating an increase in the mailing of the November issue as to subscribers of only 69,404 pounds (134,554 copies), and an increase of 13,116 pounds (a decrease of 71,505 copies), mailed as samples, as compared with the preceding issue.

It is proper to state in this connection that the estimated number of copies of the October issue to the pound is 5.93, and of the November issue 4.63. This accounts for the fact that 531,676 copies of the November issue weighed 13,116 pounds more than 603,181 copies of the October issue.

In relation to the fluctuations in the number of copies mailed as to subscribers from month to month not in keeping with the number of new subscriptions received, your attention is invited to Exhibit 47.

Tests made.

For the purpose of making comprehensive tests to determine the genuineness of the vast number of letters, agents' lists, and other documents purporting to be orders for subscriptions to The Woman's Magazine and to determine whether persons to whom copies of the publication were sent as to subscribers were in fact such, names and addresses were taken at random from the following sources:

From mailings of June and July, 1906, issues as to subscribers.....	5,606
From mailings of the June and July, 1906, issues purporting to be sent to persons whose subscriptions had expired.....	682
From copies of the June and July, 1906, issues mailed as samples.....	195
From original orders for subscriptions.....	27,752
From the publisher's subscription cards.....	5,000

(A) *Test from mailings and orders to subscription list.*

The subscription cards of the publisher are filed by States, cities, and towns. The names taken from the mailing wrappers and the various classes of subscription orders were compared with the cards in the publisher's files. The number and percentage of names for which corresponding cards were found and the number and percentage not found are, by classes, as follows:

Summary of comparison of names taken from mailings and orders with subscription list.

Source from which names were taken.	Number of names taken.	Duplicates, illegibles, erroneously transcribed, etc., not used.	Net number of names used.	Number of corresponding cards found.	Number not found.	Percentage of cards found.
Mailings as to subscribers:						
June, 1906 issue.....	2,202	6	2,196	2,093	103	95
July, 1906 issue.....	3,404	17	3,387	3,181	206	94
Mailings to persons whose subscriptions had expired July, 1906, issue.....	682	1	681	654	27	96
Orders.....	27,752		27,752	26,250	1,502	94.6
Total.....	34,040	24	34,016	32,178	1,838	.....

It will be observed from the above table that the proportion of names for which corresponding cards could not be found was in no case more than 6 per cent. The publisher accounts for the failure to find this proportion by reason of the removal of the card from its original place in the files because of a change in the address or name of the subscriber, the latter change occurring by the marriage of a female subscriber of which class the subscription list is largely made up. When the publisher is notified of such a change a new subscription card bearing the new address or name is made, and the old card destroyed. No data, however, is placed on the new card to show that such change has been made.

There is also an occasional misplacement of subscription cards due to their constant use. At least once each month all the card drawers are taken from the files and distributed among over 100 addressing clerks, who remove the cards from the drawers. In spite of the utmost care used in replacing these cards in the file drawers, errors are made and cards displaced.

The persons whose names appear on 1,696 of the 1,838 cards, for which the corresponding card could not be found in the publisher's subscription card files, as shown by the foregoing table, were, in connection with the general personal inquiry test, hereafter referred to in detail, communicated with for the purpose of ascertaining whether they in fact subscribed for the publication, and if so, when.

Replies were received from 957 persons. Of this number 874, or 91.3 per cent, stated that they subscribed for The Woman's Magazine.

In order to ascertain whether copies of the publication marked "sample copy" were being mailed to subscribers, 195 names were taken from mailings of copies of the June, 1906, issue of the Woman's Magazine so marked and comparison made with the publisher's subscription cards. Out of this number, 11, or approximately 5 per cent, were found, the remainder, 184, not being found. Four of the cards found bore evidence that the subscriptions were made after the time the names were taken by us from the sample copies.

Names for sample copies, as stated by the Lewis Publishing Co., are largely obtained by the purchase of letters in quantities from merchants and manufacturers and designated as "lots" in order to identify the sources from which obtained. These names are transcribed on cards different from the subscribers' cards. These cards are carefully compared with the subscription cards in order to avoid sending sample copies to persons who are already subscribers, and then filed in a cabinet containing only names to be used for sample purposes. These names are claimed to be used for this purpose for from six months to a year (not more than three copies to the same person in one year). No recomparison is made between names and new subscribers and names in sample lots, and since some persons to whom sample copies have been sent become subscribers the result will be the occasional sending of a sample copy and a subscriber's copy to those persons.

In examining the subscription cards a few duplicates were found, and a number of clerks were detailed to make a careful search to ascertain to what extent this condition prevailed. The number found was inconsiderable. The publisher was called upon

for an explanation as to such duplication and his reply is submitted herewith (Exhibit 48).

(B) *Personal inquiry test from mailings and orders.*

The names used in this test were taken from the sources mentioned on page 29 of this report. A circular letter (Exhibit 49) was sent to 18,521 persons, and replies were received from 10,559. Of this number, 9,952 persons, or 94.2 per cent, stated that they were or had been subscribers to the publication, and 607 stated that they were not subscribers. In this connection it should be stated that the names taken from subscription orders covered a period from April, 1904, to and inclusive of April, 1906. Tables showing the result of this test in detail are marked Exhibits 50 and 51.

To those persons whose names were taken from the mailings from whom replies to the above circular of inquiry were not received a second letter was addressed and transmitted to them through the postmaster at the office of address. The result of this inquiry is set forth in Exhibit 52.

(C) *Test from subscription cards to original orders.*

Inasmuch as the subscription orders received on any particular date are, when sent to the storerooms, scattered through packages covering a period of one to six or more weeks, it was impracticable to make a satisfactory test from the publisher's subscription cards to the subscription orders. To have accurately made such a test, of only 1,000 names, would have required the examination of about 60,000 orders 1,000 times, since an average of about 60,000 subscriptions are received during a period of six weeks. However, 16 names of persons residing at Marianna, Ark., who had been reported by the postmaster at that place as not being subscribers to the Woman's Magazine (and for which subscription cards were found in the publisher's files), were used in making a search for the subscription orders of such persons. The order for the subscriptions of such persons, which was on an agent's list, was found after an examination of the subscriptions received during a period covering nearly two months. Twenty-six clerks were engaged in this search a little less than two days. On personal inquiry at Marianna of as many of the persons referred to as could be found, they stated they had ordered the publication. A detailed report upon the matter is marked "Exhibit 53."

(D) *Tests of undated orders.*

(1) *Examination of incoming mail.*—An examination of the mail received by The Lewis Publishing Co. between June 25 and July 2, 1906, inclusive, was made. This mail as fast as received during that period was turned over to the commission unopened. The envelopes were then opened under our direct personal observation, and two of us counted the remittances contained therein. These envelopes, together with the subscription orders contained therein, are in our possession. The number and proportion of undated and prior dated orders by classes received during the period in question, as compared with the number and proportion received during other periods covered by the investigation, are shown in the following table:

Kind of subscription orders.	Orders in mail opened June 25 to July 2, 1906.		Orders received in 1904.		Orders received in 1905.		Orders received from Jan. 1 to Apr. 30, 1906.	
	Num-ber.	Per-cent.	Num-ber.	Per-cent.	Num-ber.	Per-cent.	Num-ber.	Per-cent.
Undated orders:								
Letters.....	121	2.3	15,963	4.3	19,391	3.2	5,152	2.8
Coupons.....	10	.2	3,416	.9	2,324	.4	1,273	.6
Blanks.....	480	9.3	65,653	17.9	4,073	.7	5,101	2.8
Lists.....	1,833	35.7	63,220	17.2	169,651	28.4	40,842	22.1
Total.....	2,444	47.5	148,252	40.3	195,439	32.7	52,368	28.3
Orders bearing dates prior to month preceding date of package:								
Letters.....			3,641	1.0	2,421	.4	77	.1
Coupons.....	322	6.3	37,987	10.3	45,821	7.7	11,799	6.4
Blanks.....	227	4.4	4,472	1.2	9,577	1.6	25,355	13.7
Lists.....			401	.1	6,970	1.1	2,025	1.1
Total.....	549	10.7	46,501	12.6	64,789	10.8	39,256	21.3
Total order undated or not bearing current dates.....	2,993	58.3	194,753	52.9	260,228	43.5	91,824	49.6
Orders bearing current dates.....	2,147	41.8	173,158	47.1	337,502	56.5	92,804	50.4
Grand total.....	5,140	100.0	367,911	100.0	597,730	100.0	184,428	100.0

(2) *Test of undated agents' lists.*—It was observed in making the examination of the publisher's incoming mail that a large percentage of the agents' lists were accompanied with post-office money orders. This fact suggested the advisability of making a test from a certain number of agents' lists, to ascertain whether and, if so, when, post-office money orders were sent for the amount purporting to have accompanied such lists. Accordingly the names and addresses of the agents were, together with the amount of money purporting to have been sent, and the date of the package, taken from 1,681 agents' lists, representing subscriptions to *The Woman's Magazine*, and the money-order advices on file in the St. Louis post office examined. The examination showed that the money for more than 50 per cent of such agents' lists was sent by post-office money orders, advices being found which corresponded in month and year to the date of the package, or the month preceding or following such date, which contained the respective lists. Seven advices dated in 1904, on which the amounts and names corresponded to the amounts and names on lists dated 1905, were found. A detailed statement of the result of such examination is shown in Exhibit 54.

(3) *Personal inquiry test of agents' lists.*—For the purpose of making the personal inquiry test 1,094 agents' lists were used. Two names were taken from each of 1,001 agents' lists, and from 93 agents' lists all the names thereon were taken. This test disclosed the fact that persons of whom such inquiries were made had, as a rule, a very uncertain recollection of the date when they subscribed. For example, of the 20 persons on one agent's list, which it was claimed by the publisher was received during the month of December, 1905, and which is referred to in Exhibit 55 by the number 40,336 to 40,355, inclusive, one person stated in answer to the inquiry as to when her subscription was made, "In the early spring;" another stated, "About March or April, 1906;" two replied that they were unable to definitely state when they subscribed, and nine failed to respond. Seven, however, said that their subscriptions were made in December, 1905, or the month preceding or following, which would appear to establish that the subscriptions were received by the publisher on or about the date claimed. The foregoing shows that the true date of a given agent's list can not be definitely established from the uncertain statements of one or two persons whose names appear thereon. Neither could this date be exactly established by the statements secured by addressing all the persons whose names appeared upon the number of lists referred to above, because a large proportion of the persons addressed failed to respond, but in nearly every case where the replies received were sufficient to be of value as evidence the consensus thereof was to the effect that the subscriptions were made about the time it was claimed by the publisher the lists were received. An analysis of the replies received is given in Exhibit 55.

VIII.

MISCELLANEOUS.

OPINION OF UNITED STATES ATTORNEY CONCERNING EFFECT OF INVESTIGATIONS ON PROSECUTIONS BEING CONDUCTED BY HIM.

In compliance with the instructions in the last paragraph of your letter of May 24, 1906, we consulted United States attorney D. P. Dyer as to whether investigations and reports by us concerning the matters in relation to *The Woman's Magazine* and *The Woman's Farm Journal*, mentioned in such letter, would in any way interfere with the case or cases he is conducting against these publications, The Lewis Publishing Co., Mr. E. G. Lewis, or any other person.

Mr. Dyer informed us (Exhibit 56) that he had no suggestions whatever to make as to how we should conduct the investigations; that he wanted them made absolutely without any dictation from him; that he desired the absolute truth be obtained, and whether that should be found out one way or another could not in any way interfere with the prosecutions he had on hand.

ADDITIONAL NAMES AND ADDRESSES TAKEN FROM SUBSCRIPTION ORDERS.

Names and addresses, in addition to those referred to on page 29 of this report, were taken from the agents' lists and other subscription orders by a force of clerks specially detailed by the postmaster of St. Louis for that purpose. The names and addresses taken by such clerks between June 25 and July 9, 1906, were sent to you in accordance with your instructions of June 24, 1906. On and after July 9, 1906, the names and addresses so taken were, as directed by you on July 7, sent to the postmaster. (Exhibit 57.)

AFFIDAVITS OF WATCHMEN.

At night and on Sundays and holidays, when the packages of subscription orders submitted by the Lewis Publishing Co. and other documents pertaining to the investigation were not under the observation of the commission or the clerks detailed by the postmaster, they were under the observation of the watchmen specially detailed from the St. Louis post office for that purpose. Affidavits of these watchmen respecting their duties are submitted as Exhibit 58.

EVIDENCE SECURED FROM POST-OFFICE INSPECTORS.

The evidence which we were directed to secure from the post-office inspectors of the St. Louis divisions is submitted as Exhibit 59, in a sealed envelope, in which condition the papers comprising the evidence have been kept since their receipt, save at the time when we were engaged in personally examining them.

CHARACTER OF THE PUBLICATIONS.

In respect of the character of The Woman's Magazine and The Woman's Farm Journal, a letter (Exhibit 60) from the president of the Lewis Publishing Co. is submitted in which he answers certain questions put to him relative to the advertisements appearing in the publications, of officers or stockholders of the publishing company, and of relatives of such officers or stockholders. It was further ascertained that mail matter addressed to the Hygienic Remedy Co., Clare Art Co., Faultless Suspender Co., Chemical Freezer Co., Roby Johnson Co., C. R. Crabb, and the Anti-Cavity Co. is delivered to Mrs. Mabel G. Lewis, the wife of E. G. Lewis, president of the Lewis Publishing Co., at their home. Mail matter addressed to Marie A. De Gruchy is delivered to Mrs. F. J. Cabot, the wife of the secretary of the Lewis Publishing Co., at her home. Copies of the publications under various dates are submitted. (Exhibit 61.)

MANNER OF WRAPPING PUBLICATIONS.

A statement of the president of the Lewis Publishing Co. explaining the manner of wrapping the issues of The Woman's Magazine and The Woman's Farm Journal is submitted as Exhibit 62.

A letter from the president of the Lewis Publishing Co. stating that no change had been made in the system of the company in handling mail and subscriptions since January 1, 1903, is submitted as Exhibit 63.

A letter from the president of the Lewis Publishing Co. in explanation of the terms under which clubbing arrangements with other publications are made is submitted as Exhibit 64.

The correspondence, working sheets, and other documents pertaining to our investigation which are not referred to as exhibits are on file in the division of classification, subject to your call.

A supplemental report will be rendered upon the case of The Woman's Farm Journal.

Respectfully,

*Commission to Investigate The Woman's Magazine
and The Woman's Farm Journal.*

EXHIBIT No. 26.

JANUARY 8, 1907.

HON. EDWIN C. MADDEN,
Third Assistant Postmaster General.

DEAR SIR: With reference to your instructions of May 3, 1906, directing us to investigate The Woman's Magazine and The Woman's Farm Journal, we beg to submit the following supplemental report in the case of The Woman's Farm Journal; which is to be considered in connection with the report on The Woman's Magazine. The general statements in the report on the latter apply equally to the former, with only such exceptions as are herein specifically set forth. All exhibits below No. 65 referred to herein are exhibits in the case of The Woman's Magazine.

1020 EXPENDITURES IN THE POST OFFICE DEPARTMENT.

TOTAL NUMBER OF SUBSCRIPTIONS.

The total number of subscriptions, including expirations carried for a period of one year, as computed from the tabulated statements marked Exhibit 65, is as follows:

Date.	Current.	Expirations.	Total.
Oct. 13, 1905.....	151,987	113,204	265,191
Oct. 31, 1905.....	153,597	113,616	267,213
Nov. 30, 1905.....	165,134	107,790	272,924
Dec. 31, 1905.....	190,014	98,035	288,049
Jan. 31, 1906.....	189,763	90,607	280,460
Feb. 28, 1906.....	191,676	84,264	275,940
Mar. 31, 1906.....	187,911	90,933	278,844
Apr. 30, 1906.....	197,006	77,504	274,510

As the publisher's files contained no subscription orders dated prior to January 1, 1904, it was necessary to estimate the number of subscriptions for a period exceeding one year in force on these dates and the number for one year carried as expirations, which were received in October, November, and December, 1903, using as a basis the average number of such subscriptions received per month.

Applying the same basis in estimating the number of expirations for a period of fourteen months (see p. 11 of this report) gives the following result on the dates indicated:

Date.	Current.	Expirations.	Total.
Oct. 13, 1905.....	151,987	132,774	284,761
Mar. 31, 1906.....	187,911	114,565	302,476
Apr. 30, 1906.....	197,006	104,458	301,464

The total number of subscriptions which would be in force if expirations were carried for a period of only six months, as computed from the tabulated statements (Exhibit 65), is as follows:

Date.	Current.	Expirations.	Total.
Oct. 13, 1905.....	151,987	37,907	189,894
Oct. 31, 1905.....	153,597	32,463	186,060
Nov. 30, 1905.....	165,134	32,604	197,738
Dec. 31, 1905.....	190,014	28,418	218,432
Jan. 31, 1906.....	189,763	30,377	220,140
Feb. 28, 1906.....	191,676	37,249	228,925
Mar. 31, 1906.....	187,911	49,245	237,156
Apr. 30, 1906.....	197,006	45,042	242,048

Statements showing the computations in detail by which the figures contained in the above tables were obtained are marked "Exhibit 66."

We determined upon a different method from that followed in the case of The Woman's Magazine to find the number of current subscriptions and subscriptions expired for either a period of one year or a period of six months on a given date, and it is best explained by citing a concrete case. For example:

To find the number of current subscriptions and subscriptions expired for a period of one year on December 31, 1905, we took the following:

Jan. 1 to Dec. 31, 1905, inclusive.....	186,555
Exceeding one year, Jan. 1 to Dec. 31, 1904.....	3,450
Total current subscriptions.....	<u>190,014</u>

EXPENDITURES IN THE POST OFFICE DEPARTMENT. 1021

Jan. 1 to Dec. 31, 1904, inclusive.....	132,521
Less exceeding one year, same period.....	3,459
One year subscriptions, same period.....	129,062
Less renewals Jan. 1 to Dec. 31, 1905.....	31,027
Twelve months' expirations.....	98,035
Total.....	288,049

KIND OF SUBSCRIPTIONS.

The descriptions given under this heading in the report on The Woman's Magazine apply, with the exception that the coupons clipped from The Woman's Farm Journal do not bear the printed date of issue as in the case of The Woman's Magazine. (See Exhibit 67.)

Subscription orders with the word "old" or "renewal" stricken out.

Of 541 subscriptions purporting to be renewals received in the mail opened under our observation, it was found that 86, or 15.9 per cent, were not carried on the publisher's subscription list at that time, and therefore the word "old" or "renewal" was stricken out. The number and percentage received in this period, compared with other periods covered by our count, are shown in the following table:

Period.	Total number of renewals.	Number with word "renewal."	Per cent "old" or stricken out.
June 25 to June 30, 1906.....	541	86	15.9
Jan. 1 to Dec. 31, 1904.....	36,330	8,044	22.1
Jan. 1 to Dec. 31, 1905.....	31,027	13,899	44.8
Jan. 1 to Apr. 30, 1906.....	12,082	3,183	26.3

In the mail pertaining to other departments of the Lewis Publishing Co. and to other enterprises in which some of the officers of the company were engaged, we found orders for 286 subscriptions (Exhibit 68), which, however, were not counted as such, it being presumed that they were counted and classed in the "To be verified."

Claimed subscriptions received through publishers and business concerns.

In reference to these subscriptions your attention is invited to Exhibits 32, 33, and 69.

CASH RECEIPTS ON ACCOUNT OF SUBSCRIPTIONS.

The amount of cash receipts on account of subscriptions to the Woman's Farm Journal, as shown by the books of the publisher, is as follows:

From Jan. 1 to Dec. 31, 1904.....	\$12,721.67
From Jan. 1 to Dec. 31, 1905.....	14,191.95
From Jan. 1 to Apr. 30, 1906.....	5,172.72

The amount of such receipts as shown by the count of the subscriptions is as follows:

From Jan. 1 to Dec. 31, 1904.....	\$12,463.18
From Jan. 1 to Dec. 31, 1905.....	15,527.57
From Jan. 1 to Apr. 30, 1906.....	4,956.11

While there were "defense fund" subscriptions received in the year 1905 to the Woman's Farm Journal, there is no separate entry of cash on that account in the publisher's books. The "defense fund" account is entered under the "Woman's Magazine," but covers both publications, and a separation of the amounts received for the two publications is impossible.

1024 EXPENDITURES IN THE POST OFFICE DEPARTMENT.

PERSONAL INQUIRY TEST FROM MAILINGS AND ORDERS.

For the personal inquiry test the circular letter (Exhibit 73) was sent to 6,580 persons, and replies were received from 3,752. Of this number 3,533, or 94.2 per cent, stated that they were or had been subscribers to the publication, and 219 stated that they were not subscribers.

The names taken from the subscription orders covered the period from January, 1904, to and inclusive of April, 1906. Tables showing the result of this test in detail are marked Exhibits 74 and 75.

To those persons whose names were taken from the mailings from whom replies to the first circular letter were not received, a second letter was addressed and transmitted to them through the postmaster at the office of address. The result of this inquiry is set forth in Exhibit 76.

TEST OF UNDATED ORDERS.

Examinations of incoming mail.—An examination of the mail pertaining to The Woman's Farm Journal received by The Lewis Publishing Co. from June 25 to June 30, 1906, inclusive, was made. The number and proportion of undated and prior dated orders by classes received during that period, as compared with the number and proportion received during other periods covered by the investigation are shown in the following table:

Kind of subscription orders.	Orders in mail opened June 25 to June 30, 1906.		Orders received in 1904.		Orders received in 1905.		Orders received from Jan. 1 to Apr. 30, 1906.	
	Num-ber.	Per-cent.	Num-ber.	Per-cent.	Num-ber.	Per-cent.	Num-ber.	Per-cent.
Undated orders:								
Letters.....	20	1.6	5,433	4.00	5,445	2.92	1,350	2.25
Coupons.....	234	18.8	39,648	29.52	43,803	23.45	12,608	21.00
Blanks.....	174	14.0	19,464	14.49	3,649	1.95	3,256	5.42
Lists.....	305	24.5	14,285	10.78	51,191	27.44	13,889	23.15
Total.....	733	58.9	78,830	59.45	104,088	55.79	31,113	51.82
Orders bearing dates prior to month pre- ceding date of package:								
Letters.....			1,428	1.08	130	.07	7	.01
Coupons.....			56	.04	76	.04	366	.61
Blanks.....	28	2.2	3,021	2.28	2,301	1.24	3,449	5.74
Lists.....			526	.40	1,761	.94	6,500	10.98
Total.....	28	2.2	5,031	3.80	4,268	2.29	10,412	17.34
Total orders undated or not bearing current dates.....	761	61.1	83,861	63.28	108,356	58.08	41,525	69.16
Orders bearing current dates.....	485	38.9	48,040	36.72	78,199	41.92	18,517	30.84
Grand total.....	1,246	100.0	132,521	100.00	186,555	100.00	60,042	100.00

Test of undated agents' lists.—The names and addresses of the agents were, together with the amount of money purporting to have been sent and the date of the package, taken from 789 undated agents' lists, representing subscriptions to The Woman's Farm Journal, and the money-order advices on file in the St. Louis post office examined. The examination showed that the money for more than 50 per cent of such agents' lists was sent by post-office money orders, advices being found which corresponded in month and year to the date of the package, or the month preceding or following such date, which contained the respective lists. Two advices dated in 1904, on which the amounts and names corresponded to the amounts and names on lists dated 1905, were found. A detailed statement of the result of such examination is shown in Exhibit 54.

Personal inquiry test of agents' lists.—In this test 266 agents' lists were used. Two names were taken from each of 246 lists and from 20 lists all the names thereon were taken. An analysis of the replies received from the persons whose names were taken from the 20 complete lists is shown in Exhibit 77. These replies were so indefinite and at variance as to make the test of little value in determining the date the subscriptions were actually made. However, 10 of these agents' lists which are referred

to in this exhibit were accompanied with a remittance by money order, and in each of these cases money-order advices were found which corresponded in month and year to the date of the package which contained the respective lists or the month preceding or following such date.

The tabulated findings of the "Citizens' Committee" are submitted herewith as Exhibits 78 and 79.

The correspondence, working sheets, and other documents pertaining to our investigation which are not referred to as exhibits are on file in the Division of Classification subject to your call.

Respectfully,

*Commission to Investigate The Woman's Magazine
and The Woman's Farm Journal.*

These reports show that no excess copies of the Woman's Magazine and Woman's Farm Journal had been mailed as charged in the indictments, or by the St. Louis postmaster.

It will be remembered that when the commission was first sent out it was merely to ascertain the facts with regard to mailings in April, 1906, upon which the publishing company had appealed.

Mr. BRITT. I understand that you are making that deduction from the report, and that you are not stating that the report says that there were no copies sent out in cases of those sent to the subscribers?

Mr. MADDEN. The report so states.

Mr. BRITT. I understand you to state that the report says that no copies were sent.

Mr. MADDEN. Did I say "says"? I meant "shows."

Mr. BRITT. I am asking you just what you did say.

Mr. MADDEN. "Show," I said. "These reports show that no excess copies" had been mailed.

Mr. BRITT. I am asking you if you are stating that as your deduction from the report, or if you mean to state that the report says so itself?

Mr. MADDEN. I am pretty clear about that, that the report shows by the figures—the tabulations—that no excess copies were mailed.

Mr. AUSTIN. How could there be any doubt?

Mr. MADDEN. No; there could not be any doubt. I am pretty sure that is correct. You were calling my attention to that; I can not remember that individual circumstance, but I stand for that, that the reports show that.

Mr. AUSTIN. You propose to submit the reports, do you not?

Mr. MADDEN. Surely. - It will be remembered that when the commission was first sent out it was merely to ascertain the facts with regard to mailings in April, 1906, upon which the publishing company had appealed. While the commission was at work in the company's plant the Postmaster General directed that the count be extended backward to include the issues for October, 1905, and while the work was going on, he instituted a separate secret inquisition, under cover of the Third Assistant's investigation. It was for the alleged excess mailings in October, 1905, that the officers of the company had been indicted.

The Third Assistant, upon the findings of the post-office commission, rendered his decision to the effect that no excess copies had been mailed during the time covered by his investigation. Owing to the unusual circumstances, a report of the findings and the basis thereof was sent to the Postmaster General, under date of February 7. This

report contained a form of letter which was to be sent to the St. Louis postmaster, over the Third Assistant's name and title, informing him of the decision which had been made and instructing him to refund to the publisher the deposits in excess of the pound rate held by him pending the decision. The following is the essential paragraph of the letter. A compared copy of the report to the Postmaster General, containing the whole letter, is submitted herewith, marked "Exhibit No. 27":

EXHIBIT No. 27.

THE WOMAN'S MAGAZINE AND THE WOMAN'S FARM JOURNAL, ST. LOUIS, MO.

Report of the Third Assistant Postmaster General to the Postmaster General on the case of *The Woman's Magazine* and *The Woman's Farm Journal*, published by The Lewis Publishing Co., of St. Louis, Mo.

Note.—The report on this case consists of three sections, Nos. I, II, and III.

Section I.—Decision of the Third Assistant Postmaster General as to whether or not, as a matter of fact, the mailings of the publications in question were in excess of the number which the publisher was entitled to mail of the issues between October, 1905, and April and May, 1906, as to subscribers and sample copies at the rate of 1 cent a pound.

Section II.—Decision of the Third Assistant Postmaster General as to whether or not the publications are entitled to continue in the second class of mail matter.

Section III.—Important matters and observations concerning the questions involved in and the developments incident to the case, which are highly important, to be considered as affecting not only the particular publications but the whole postal service.

SECTION I.

DEAR SIR: Under date of April 14, 1906, you sent me the following instructions:

"The letter of E. G. Lewis and the accompanying statement of the Lewis Publishing Co., both of which are dated April 7 and inclosed herewith, have been transmitted to the Post Office Department by Hon. Jesse Overstreet, Member of Congress, to whom they are addressed.

"It will be seen that in his letter Mr. Lewis complains that the postmaster at St. Louis has required the Lewis Publishing Co. to deposit with him an amount sufficient to cover the postage on copies of its publication entitled 'Woman's Farm Journal,' which he believes to have been mailed in excess of the number legally mailable at the pound rate, and as president of that company, asks to be accorded a hearing upon the issue raised by the action of the postmaster.

"You will please immediately institute an investigation for the purpose of determining whether the *Woman's Farm Journal* and the *Woman's Magazine*, issued by the Lewis Publishing Co., are entitled to second-class privileges, and if so, what number of copies of each publication should be admitted to the mails monthly at the rate of 1 cent per pound. This investigation should be thorough and comprehensive, and in pursuance of it the company should be afforded an early opportunity to be fully heard upon the question involved."

Under instructions which you later sent me, the investigation was extended back to cover the October, 1905, issues of both publications, and was brought down to cover the May, 1906, issue of *The Woman's Magazine* and the April, 1906, issue of the *Woman's Farm Journal*.

The law on the case is as follows:

"Mailable matter of the second class shall embrace all newspapers and other periodical publications which are issued at stated intervals, and as frequently as four times a year and are within the conditions named in sections 12 and 14. (Sec. 427, Postal Laws and Regulations.)

"The conditions upon which a publication shall be admitted to the second class are as follows:

"First. It must regularly be issued at stated intervals, as frequently as four times a year, and bear a date of issue, and be numbered consecutively.

"Second. It must be issued from a known office of publication.

"Third. It must be formed of printed paper sheets, without board, cloth, leather, or other substantial binding, such as distinguish printed books for preservation from periodical publications.

"Fourth. It must be originated and published for the dissemination of information of a public character, or devoted to literature, the sciences, arts, or some special industry, and having a legitimate list of subscribers: *Provided, however*, That nothing herein contained shall be so construed as to admit to the second-class rate regular publications designed primarily for advertising purposes, or for free circulation, or for circulation at nominal rates. (Sec. 428, Postal Laws and Regulations.)

"When any publication has been accorded second-class mail privileges, the same shall not be suspended or annulled until a hearing shall have been granted to the parties interested. (Sec. 444, Postal Laws and Regulations.)

"All publications of the second class, except as provided in section 25 of said act (of Mar. 3, 1879, ch. 180, 1 Supp., 249), when sent by the publisher thereof, and from the office of publication, including sample copies, or when sent from a news agency to actual subscribers thereto, or to other news agents, shall * * * be entitled to transmission through the mails at 1 cent a pound or fraction thereof, such postage to be prepaid as now provided by law. (Sec. 448, Postal Laws and Regulations.)

"The rate of postage on newspaper and periodical publications of the second class, when sent by others than the publisher or news agent, shall be 1 cent for each 4 ounces or fractional part thereof, and shall be fully prepaid by postage stamps affixed to said matter. (Sec. 455, Postal Laws and Regulations.)"

The ruling of the postmaster from which the publisher, through Hon. Jesse Overstreet, appealed was made under the following ruling of the Third Assistant Postmaster General:

"If sample copies, in excess of the number * * * (100 per cent on the subscription list) be presented for mailing, they are not entitled to the pound rate of postage. They are chargeable with the transient second-class rate of 1 cent for each 4 ounces or fraction thereof, to be prepaid with stamps affixed, on each separately addressed copy or package of unaddressed copies."

The facts, as disclosed by an investigation conducted by this bureau, treating each publication separately, are as follows:

THE WOMAN'S MAGAZINE.

The total mailings of this publication by the month are found to be as follows:

Copies.

Issue.	Subscriptions.	Samples.	Total.
October, 1905.....	852,034	603,181	1,455,215
November, 1905.....	986,588	531,676	1,518,264
December, 1905.....	1,127,898	345,690	1,473,588
January, 1906.....	1,182,854	317,818	1,500,672
February, 1906.....	1,176,921	312,439	1,489,360
March, 1906.....	1,138,868	360,426	1,499,294
April, 1906.....	1,184,291	292,296	1,476,587

The foregoing is, of course, an estimate. It would be next the impossible to tell exactly the number of copies mailed, since it is true that a variation of one-tenth of an ounce in the weight per copy, due to variation in the trimming of the margin, variation in the weight of paper, dampness of the paper, or weight of wrappers will increase or decrease the number of copies per pound so that the total number mailed of any issue may vary 50,000 copies in the estimate. The estimate is based upon all the data which could be secured and which would furnish the most reliable basis for the calculations. The number of pounds mailed was ascertained from the receipts issued to the publisher by the postmaster, which receipts are required to show the number of pounds sent to subscribers, the number of pounds sent as samples, and the total pounds mailed.

For the purposes of this report (sec. 1), it is immaterial and unnecessary to consider whether or not more copies were printed than were mailed. The question is simply one of fact: Did the publisher, under the ruling quoted on page 3, mail at the pound rate more copies of either publication than he was entitled to mail; and if so, to what extent did he exceed his privilege?

That there are subscribers to the publication there is no doubt. The question depends entirely upon the number of subscribers; that is to say, in order to decide as to whether there was or was not an excess mailing at the pound rate it is neces-

sary to find whether the persons whose names and addresses appear on the publisher's list as subscribers are such as a matter of fact, and the whole number of them, the publisher under the ruling being entitled to mail an equal number of copies at the pound rate as samples.

The question of whether the persons on the list are subscribers can not be decided upon the methods of the publisher in securing their subscriptions, but the result of the methods may be used in finding whether or not the persons whose names and addresses were found on the list are in fact actual subscribers; that is to say, the question of whether or not such persons are in truth subscribers turns not upon the matter of how they subscribed, or how they were secured, but is one of fact—did they subscribe?

Consideration must be given to the circumstance that this publication is sold at a very low rate, and naturally the publisher could not afford a too expensive system in the securing, classifying, handling, and accounting methods. The publisher stated at the hearing before this office substantially that he had sought to observe every known rule and limitation of the Post Office Department in the conduct of his business, and if it were found that any practice or method of his was in conflict with the rules he would immediately amend the same, for he stood ready to meet all requirements as soon as he could find out what those requirements were.

It was necessary for the commission (the organization, work, and findings of the commission are dealt with in Section III), which investigated the list and classified the various orders in one way and another, to bring each class to attention with a view of deciding as to whether or not under the rules it as a class should or should not be counted. Many individual subscriptions were found, and some classes of subscriptions were found the proper status of which was difficult to determine. Where the actual and indisputable documentary evidence of subscriptions could not be found, or where the documentary evidence itself was in doubt, tests were instituted with a view to finding, not whether each individual name carried on the list should or should not be counted—because that would have been an almost interminable task, would have involved more work and time than have already been expended on the case, and would have been reprehensibly wasteful of the department's energies—but whether as a general thing the claims of the publisher were substantiated by the statements of the subscribers themselves, or other evidence, as the case might be.

Numerous tests were made. They were conducted under the usual rules and practices of the department in dealing with like questions in other cases, the object being to be entirely fair and impartial both to the publisher and the department. No special rule was made, and in no instance is the publisher given the benefit of any doubt, except where the same consideration would be shown any other publisher in a similar situation. The report of the commission and the voluminous exhibits accompanying it show the exactness and closeness of scrutiny in the work as a whole. The result of every test is favorable to the publisher, and where inquiries were addressed to the subscribers themselves the replies favored him to an average of about 90 per cent or over.

As a result, it was found that under no rule of the department so far applied to any other publisher or publication could any exception be taken to the great bulk of the subscribers on the list. There are, however, two features of the subscription list to be considered by themselves in order to settle as to their allowance or disallowance, as the case may be. They are the "expirations" and the paid-for-by-others—third parties. There are also a number of classes of alleged subscriptions, each small in itself, which are objectionable. The action taken on them will appear later.

The actual count of subscription orders, tested and substantiated as stated, including those expired, is as follows:

Subscriptions.

Dates.	Current.	Expirations.	Total.
October, 1905.....	576,802	198,632	775,434
November, 1905.....	581,707	187,589	769,296
December, 1905.....	603,477	175,494	778,971
January, 1906.....	577,771	196,584	774,355
February, 1906.....	559,812	224,492	784,304
March, 1906.....	529,717	277,011	806,728
April, 1906.....	527,891	292,747	820,638

The publisher stated at the hearing before this office April 30 and May 1, 1906, that in the case of *The Woman's Magazine* he carried expired subscriptions on his list six months with the expectation of securing renewals. At the end of that time, if not renewed, the names were eliminated. The investigation disclosed that some of the subscriptions were carried six and two-fifths months, and in many instances as long as eight months, due to the methods employed. It appeared that the expired subscriptions, due under the rules of the publisher to be eliminated at the end of six months were not in the course of business reached until some portions of them had been carried as long as eight months.

The totals given in the foregoing table, it will be seen, do not agree with the estimates made from the pounds mailed, as shown by the receipts issued by the postmaster. They are considerably less in each case; but at every mailing covered by the investigation the list of current subscriptions fairly allowable under the rules, excluding expirations (credits), was more than the number of sample copies mailed, with but two exceptions—that of the October, 1905, issue, and that of the May, 1906, issue. The current subscriptions for those issues, excluding expirations, were, for October, 1905, 576,802, while it appears from the estimate made from the postmaster's record of weight that 603,181 sample copies of that issue were mailed; and for the May 1906, issue, 527,891 current subscriptions were found, while the estimate of the mailing of sample copies is 547,701. Therefore, except for those issues, the question of whether the publisher exceeded his privilege to mail copies at the pound rate is easily and clearly disposed of. Whether or not there were excess mailings with the issues of October, 1905, and May, 1906, turns upon the question of whether the so-called "expirations" are allowable. If allowable, the publisher is more than safely within his privilege. Indeed, he might have mailed many thousands more.

Expired (credit) subscriptions.—The number of subscriptions to the *Woman's Magazine* carried regularly for a period of about six months after expiration averaged approximately about one-third of the whole claimed list from the October, 1905, to the May, 1906, issues, both inclusive. In other words, from about 200,000 to nearly 300,000 names and addresses were carried on the list during that period from month to month in the hope or expectation of securing renewals. The carrying of an expired subscription is substantially the extension of credit to the subscriber. There is no law which requires a subscription to be paid in advance. Probably no publisher is, and certainly very few are, without expired subscriptions upon their lists. The only rule on expired subscriptions is that published in Circular XXV. It is as follows:

"Expired subscriptions may be carried when necessary for a sufficient time to enable the publisher to ascertain whether it is the intention to renew. After the expiration of such reasonable time they will not longer be recognized as actual subscriptions, and in all cases the ratio of expired subscriptions to the whole list, irrespective of the time carried, will be considered and given weight in determining the legitimacy of lists of subscribers and the primary design of the publication."

This rule will not serve for the case in hand. It goes to the list as a whole and to the primary design of the publication, and can not be applied to excess mailings. It is, however, applicable to the case as treated in Section II.

No satisfactory basis for a calculation as to what percentage of the expired subscriptions were actually renewed was found. If renewals were made after the expiration of a period of eight months (some were carried even longer) the original evidence of subscription had by that time been destroyed and the renewals were counted as original subscriptions are counted. It turns out, then, that a person who had subscribed for one year, and who had not renewed at the end of the year would be carried for six months, and possibly eight months, on the publisher's books as a subscriber. If he renewed within that time his subscription was dated back to begin at the expiration of the old one. If at the end of six or eight months he had failed to renew, six or eight copies, as the case might be, over and above what he actually subscribed for would have been sent him free. If he had renewed after eight months, which appears to have been true in some thousands of cases, the subscription would be treated as new, no charge being made for the copies over and above the number due him on the previous subscription. This might happen over and over again with the same subscriber.

There is no authority of law for holding that a subscription must be paid in advance, and no authority of law for holding that every subscription terminates at the expiration of the period for which it is written. It is upon this construction, existing since the passage of the act of March 3, 1879, that the carrying of expired subscriptions is permissible. Of course, no publisher secures a renewal of every subscription carried as a credit after expiration. That could not be expected. It is, however, reasonable to expect that a publisher should be able to show that he does secure a fair percentage of renewals from the persons he carries. He should indeed be able to show that at

least two out of every three, and certainly as many as three out of every five, actually renew. If such a rule had been in existence and applied to this particular case we should probably rule out a great percentage of the number of subscriptions carried as expirations.

So far, however, we have never had any rule at all on this subject other than the one quoted from Circular XXV, and it is indefinite as to proportion and length of time, and so far as it goes has not yet been applied in a single case. In the course of the reform of the abuses of the second-class privilege the necessity of a rule fixing definitely the proportion and the time permissible to carry expired subscriptions has frequently been felt, but the point has not been reached where it was considered wise and timely to formulate and publish one. The advance of the reform must not be headlong or indifferent to the equities of the situation. It must be by steady, well-thought-out, well-planned, and conservative degrees. This expired-subscription feature is only one phase of the great postal problem, and it is a universal practice. The reform in all of its aspects is a difficult and delicate task and one intensely irritating to publishers because of the long period of years during which the department gave substantially no attention at all to such matters of administration. The reform, of course, is aimed at abuses, but the rules made to reach them more or less affect the legitimate. That is unavoidable.

Whatever rule may be adopted definitely fixing the limits of proportion and time as to credits and expirations, it is certain to shock the publishing industry to its very foundation, so extensive and so long established has been the practice. Even if we had no new law in expectation, the point is not yet reached where it would be considered wise and tactful to make and publish such a rule. This will be understood better when it is known that many publishing houses carry expired subscriptions three or four years. The practice varies according to what the publisher himself deems to be in the best interests of his business, and when a rule definitely limiting the privilege is made it is certain to meet strenuous opposition, and to be regarded more or less as a curtailment of the publisher's rights.

As illustrating the truth of this it is only necessary to state that a short time ago a false report was circulated by a publisher to the effect that the department was about to rule against credit and expired subscriptions. Of course there was not a grain of truth in it, but nevertheless it provoked a strong protest. But for the privilege of carrying expired subscriptions, and for a number of years, it is said that the county press could not exist; and the publishers appearing before the meeting of the Postal Commission in New York October last argued that they should be permitted to carry expirations at least a year and a half.

The report of the investigation shows that the income of the publisher from subscriptions, including renewals, was estimated for the year ending December 31, 1905, to be \$50,100.04 for the 597,730 subscriptions shown by the actual count. At 10 cents a year he would have received approximately 41,750 subscriptions per month during the year. As a matter of fact, he received an average of 49,810 per month, taking into account the 5-cent clubs and 6-cent clubs. It is unnecessary for the purpose of this decision to inquire what percentage of the money received was for renewals. It is clear that the income from subscriptions, both new and renewals, was great enough to carry the number added to the list from month to month as expirations in the place of those dropped and renewed; but is not clear that the income from subscriptions, both new and renewals, indicates a percentage of renewals great enough to warrant the carrying of such a proportion of expirations. The publisher undoubtedly is seeking new subscriptions all the time, but the actual income from new subscriptions and for renewals we do not know.

If a definite and comprehensive rule were adopted concerning credit and expired subscriptions it would scarcely be liberal enough to permit the publisher of a 10-cent magazine to carry for such a length of time so great a number as in this case. There is no doubt, however, that whatever rule might be adopted it would be broad enough to allow him to carry sufficient expirations for six or eight months to have made the number of subscribers' copies exceed the number of sample copies of the October, 1905, and May, 1906, issues. Eliminating expirations, the publisher was safely within his rights between those issues, because in no case did he mail a greater number of sample copies than the number of copies mailed to current subscribers.

Since there is no definite existing rule of limitation to apply to credits and expirations, to make a special rule for this case would be unwarranted and seriously criticizable; especially as to give any such rule effect it would be necessary to apply it *ex post facto*, penalizing a practice not in conflict with any existing rule, and this in the face of the publisher's repeated statements that he stands ready to meet any and all requirements or limitations of the department as soon as known.

I believe the publisher of the *Woman's Magazine* is violating the spirit of the second-class privilege by carrying such a volume of expired subscriptions, that it is an abuse, that it results in other abuses, that it is unfair to the Government, and that it is reprehensible and ought to be dealt with. But I am compelled in justice to state that in this regard this publisher is no worse than many others in his class. Indeed, it is known that his case is by no means as flagrant as some others. It is understood that some publications in his class carry expired subscriptions without any limit save the convenience of the publisher, and with some of them the securing of a subscription once means that the name will never be cut off, renewal or no renewal. Once a subscriber always a subscriber, is their rule. Then again some of our best publications carry expired subscriptions for several years.

If existing law is to continue upon the statute books, there should be a rule adopted and published as soon as the situation will permit which will apply thereafter uniformly to all alike, and which will fix the limit to which the department will tolerate the practice of carrying credit or expired subscriptions, and should be to the effect that no sample-copy privilege may be based on expired subscriptions.

I rest on this question by stating my condemnation of the practice, and finding that there is no existing rule which I would be justified in applying to the expired subscriptions in this instance, either as to the proportion carried or for the length of time, as a ground upon which to rest in deciding whether or not there has been an excess mailing at the pound rate. When a general rule is formulated, and due notice is given when it will take effect, this publisher, with others, will be required to abide by its terms, whatever they may be.

Subscriptions for others.—During this publisher's trouble with the postmaster at St. Louis a considerable sentiment in his behalf was created throughout the country. Many people seemed to believe that he was being abused or ill-treated, and some, as a measure of assistance to him, paid for copies of *The Woman's Magazine* to be sent to third persons which the publisher himself should select. Large numbers of copies were sent out under this arrangement, but it was only a temporary condition and applied to only occasional issues.

Under the rules of Circular XXV, if in force, the great bulk of the alleged subscriptions paid for in this way would not be acceptable at the pound rate. They would be subject to the transient rate of 1 cent for each 4 ounces or fraction. That rule, as you will recall, has been set aside in the case of the stock journals, which are by far the worst offenders in this regard in the country. Their practices are one of the worst abuses of the second-class privilege. The circumstance that we suspended this rule in the case of the stock journals makes it impossible in fairness to now apply the rule to *The Woman's Magazine*, especially so because in that case it was but a small fraction of the whole circulation to subscribers, while in the case of the stock journals it constitutes the bulk of their circulation, and is the basis of their so-called "legitimate list of subscribers." With them the practice is permanent and continuous in the face of their knowledge of the department's ruling, while so far as we know this publisher is ignorant of the ruling.

Another reason why it would be unfair to enforce this ruling in this instance is that recently when the ruling was brought to judicial test, in the case of *The Iowa Homestead*, and the department was sustained by the courts, we refunded to the publisher the 4-ounce rate and permitted the copies paid for by others to be mailed at a cent a pound to the end of the publisher's contract with the persons interested in the circulation of the paper for business reasons.

The publisher and the publication.—In treating this case it was necessary for me to take great pains to be wholly uninfluenced by the estimates or opinions of others, or of myself, as to the character of the publisher himself. Whether he be good or whether he be bad has nothing to do with the question of the rate of postage on his periodical. It is all a question of law, fact, rules, and departmental practice as affecting the periodical itself. The publisher and the publication must be treated under exactly the same rules as all others, and that has been done. There has been no stretch of any ruling to cover any question. This case, however, is unusual, in that so far as known never before has any publisher's business or business methods been subjected to such a raking scrutiny, the minutest detail having been examined into for the purpose of rendering a decision on this excess question.

It is important to know that *The Woman's Magazine* is of the mail-order type of periodical, and that there is no objection in law to the mail-order publication as such. If *The Woman's Magazine* be in whole or in part an abuse of the second-class mailing privilege, it must in justice be said that it does not appear to be as flagrant as others in its class which have come to attention and which for prudential reasons the department has not undertaken to deal with, action having been deferred until the class can be taken up as a whole and uniform rules be applied to all. So

far the department has not been free to take up and deal with this class, nor has it been equipped for such a campaign. It is alleged, and it is generally understood, that with this kind of periodical grave abuses of the second-class privilege exist; that many of the claimed lists of subscribers are not legitimate as required by law, and that in other particulars they do not comply with the law's requirements. However, they are substantially all alike, varying only in degree in one particular or another. Therefore, the wisdom of singling out one or two publications to be dealt with in advance of being ready administratively to handle the class as a whole may well be doubted.

Certainly it is not without the most serious embarrassment to the operation of uniform, impartial, and efficient administration of the second-class mail problem. It is, of course, understood that this case did not originate with, and was not under the direction of, the Third Assistant Postmaster General until it was by your letter of April 14 transferred to him. If the postmaster conceived the *Woman's Magazine* to be an abuse in whole or in part of the second-class privilege, it was his duty to report his reasons for so believing to the Third Assistant Postmaster General and await instructions. It was wrong for him to proceed on his own motion and according to his own methods and judgment.

Alleged subscriptions rejected.—The investigating commission found in the course of its work many different classes of subscriptions and examined into each particular class. All those secured by so-called clubbing arrangements with other publications are objectionable. The rule in Circular XXV applicable to them is as follows:

"The publisher having fixed the price of his publication will be regarded, in the absence of evidence to the contrary, as having done so in good faith and according to its value. Any reduction, therefore, from such advertised price will be carefully considered in its bearing upon the question of the primary design of the publication in respect of advertising and its circulation at a nominal rate. Wherever such reduction, by whatever means brought about, is so great that the publication is sold at less than half the advertised price, it will be taken as reducing it to a nominal rate; and in cases where the subscription price as fixed by the publisher appears to be already lower than the customary or general market price for publications of the same class, any reduction from that price, by whatever means brought about, will be taken as reducing it to a nominal rate."

Under the underscored part of the foregoing rule I hold that the publisher of any publication sold as low as 10 cents a year is not entitled to make any reduction whatever in the price to subscribers by any process whatever, directly or indirectly. I deem it proper to enforce such a ruling in this instance, and therefore reject all these subscriptions where the alleged subscribers paid less than the advertised price on the ground that they do not constitute actual subscriptions. This is without deciding at this time whether or not the advertised price (10 cents a year) is itself a nominal rate, but merely holding that any reduction from that price does effect a nominal rate or free circulation of the publication to that degree. In all those cases which have come up for attention the reduction made to the subscriber by persons securing subscriptions was without the knowledge of the publisher, but he must be held responsible for those who act as his agents. The action in this particular is simply that of refusing to receive in the mails at the pound rate copies addressed to such alleged subscribers. The publisher's privilege to mail copies at the pound rate is held to be limited to those sent to subscribers and those sent as samples; and these copies, if mailed at all, are subject to the transient rate, since the publisher in sending them is not doing so in his capacity as a publisher.

Under this ruling subscriptions secured through the following-named persons, firms, and institutions are rejected:

Name.	Address.	Number of subscriptions.
Bobart & Co.	Clinton, Iowa.	67
Brookman Manufacturing Co.	Chicago, Ill.	26
Walter L. Beals.	Middleboro, Mass.	22
Dieter Co.	Chicago, Ill.	93
Farmers & Mechanics' Bank.	Bath, N. Y.	431
Gallipolis Journal.	Gallipolis, Ohio.	25
Green's Fruit Grower.	Rochester, N. Y.	588
Wm. Penn Halleck.	Harrisburg, Ill.	1,080
G. M. McCracken & Son.	Liberty, Pa.	50
Martin Bank.	Martin, Tenn.	120
Midland Novelty Co.	Buffalo Center, Iowa.	50
Pine Tree State Seed Co.	Bath, Me.	10
Press Publishing Association.	Detroit, Mich.	138
A. D. Porter Co.	New York, N. Y.	2,913
Twentieth Century Publishing Co.	Detroit, Mich.	51
Vick Publishing Co.	Rochester, N. Y.	416
L. E. West Gum Co.	Rock Island, Ill.	26
World Manufacturing Co.	Cincinnati, Ohio.	2,081
Adrian Daily Telegram.	Adrian, Mich.	135
Enterprise Publishing Co.	Waxahatchie, Tex.	150
Finley, Dicks & Co.	New Orleans, La.	600
Michigan Farmer.	Detroit, Mich.	3,256
Neosho Times.	Neosho, Mo.	23
Ohio Farmer.	Cleveland, Ohio.	261
Richmond Times Dispatch.	Richmond, Va.	3,472
Southern Tobacconist & Farmer.	do.	91
Western Sun.	Vincennes, Ind.	214
Asheboro Courier.	Asheboro, N. C.	44
Big Tree Publishing Co.	Warrensburg, Ill.	100
Smith Printing Co.	Warsaw, Ind.	100
Southern Vermont Mirror.	Danby, Vt.	300
Kansas Farmer.	Topeka, Kans.	68
Republican Publishing Co.	Rushville, Ind.	78
Vinton Leader.	Vinton, Ohio.	347
News Herald.	Cuba City, Wis.	153
Seattle Post Intelligencer.	Seattle, Wash.	141
Log Cabin.	Cynthiana, Ky.	41
Cleveland Press.	Cleveland, Ohio.	1,444
Nashville American.	Nashville, Tenn.	324
Daily Drivers Telegram.	Kansas City, Mo.	442
The Dispatch.	Lexington, N. C.	100
Progressive Farmer.	Raleigh, N. C.	1,404
Seneca Kicker.	Seneca, Pa.	55
Columbus Dispatch.	Columbus, Ohio.	295
Burlington Hawk Eye.	Burlington, Iowa.	150
Plain Talk.	Newport, Tenn.	26
Independent.	Pomeroy, Ohio.	75
Reliable Poultry Journal.	Quincy, Ill.	29
Gallia County News.	Gallipolis, Ohio.	100
Gallia Times.	do.	2,000

Conclusion.—My decision is that under no existing rule did the publisher of the Woman's Magazine mail at the pound rate copies in excess of his privilege at that rate with the issues from October, 1905, to May, 1906, both inclusive. The following instructions will be sent to the postmaster:

"POSTMASTER, *St. Louis, Mo.*

"SIR: You are informed that, upon a hearing accorded the publisher of the Woman's Magazine April 30 and May 1, 1906, and an investigation of the subscription list of that publication, and the mailings of the issues thereof from October, 1905, to May, 1906, both inclusive, under the usual rules governing the department and applicable to all publications in similar situations, no copies in excess of the publisher's privilege were mailed at the pound rate. You are therefore directed to refund to the publisher the deposits in excess of the pound rate held by you pending this decision.

"In this connection you will inform the publisher that this decision is not to be considered as sanctioning in any particular the methods of securing subscriptions or of the subscription price, or of approving the list of subscribers as legitimate, and that concerning the expired subscriptions especially is this decision not to be construed as an approval of the carrying of such a proportion for such a length of time, or of basing a sample copy privilege on expired subscriptions. In these regards he is simply given the benefit of the doubt in the absence of a definite rule applicable alike to all publishers.

"You will also inform the publisher that the subscriptions obtained by clubbing offers by persons acting as his agents—whether their practices were known to him or

not—where the subscription price was in any degree reduced to the subscriber it is held that such subscriptions are not in fact subscriptions, and therefore may not be included in the legitimate list of subscribers required by law, and that hereafter all copies mailed in fulfillment thereof shall be charged at the transient second-class rate, prepaid by stamps affixed, because his privilege to mail copies at the pound rate is limited to those sent as to subscribers and as samples.

"The particular subscriptions rejected will be found on the accompanying sheet. If the publisher finds it difficult or impossible to segregate these subscriptions from his list so as to prepay them by stamps affixed, as required, you may, until he can accomplish the work of segregation, accept the transient rate on an equal number of copies, to be prepaid in money, to be remitted to the department in canceled stamps attached to a sheet or sheets of paper, as is customary in such cases. Sixty days will be allowed the publisher to pay the postage on these copies in this manner, or so much of that time as may be necessary."

THE WOMAN'S FARM JOURNAL.

The law and rulings applicable to this case are of course the same as in the case of the Woman's Magazine, and need not be repeated. That is also true as to the statements concerning the publisher's business methods, the various kinds of subscriptions, the application of the rules and practices of the department, and of the investigation conducted by this office.

This case, however, differs from the other in that, without allowing the expirations to be counted as subscriptions, the publisher has greatly exceeded his privilege at the pound rate with the mailings of the issues from October, 1905, to April, 1906, inclusive. For no issue was there found to be current unexpired subscriptions enough to justify the mailing of such a number of sample copies as was mailed. The expirations are in much greater proportion to the whole list than in the previous case and are carried for approximately twice the length of time.

From the record of pounds mailed of The Woman's Farm Journal at the post office at St. Louis from October, 1905, to and including April, 1906, the following estimate is obtained; and what was said concerning the estimate in the case of The Woman's Magazine is true in this instance:

Copies.

Issues.	Subscribers.	Samples.	Total.
October, 1905.....	346,445	256,114	602,559
November, 1905.....	321,261	274,489	595,750
December, 1905.....	370,359	230,464	600,823
January, 1906.....	346,830	245,508	592,338
February, 1906.....	358,623	231,336	589,959
March, 1906.....	328,528	261,334	589,862
April, 1906.....	348,191	242,875	591,066

The investigation conducted in this case was exactly the same as in the case of The Woman's Magazine, and the report of the investigating commission as to the number of subscriptions found is as follows:

Subscriptions.

Issues.	Current.	Expirations.	Total.
October, 1905.....	183,597	145,991	329,588
November, 1905.....	165,134	145,660	310,794
December, 1905.....	190,014	136,017	326,031
January, 1906.....	189,763	134,979	324,742
February, 1906.....	191,676	138,464	330,140
March, 1906.....	187,911	144,462	332,373
April, 1906.....	197,006	137,863	334,869

From the foregoing it will be seen that the question in this case of determining whether the publisher mailed copies at the pound rate in excess of his privilege depends upon the decision to be made as to the expired subscriptions. If allowed, he is well within his privilege; if disallowed, he has exceeded his privilege.

What was said concerning expired subscriptions to The Woman's Magazine applies here. In this case, however, the rule of the publisher is to carry them for 12 months, and the investigation disclosed that in the course of business before elimination many are carried 14 or 16 months. As stated before, we have no definite rule as to the proportion or length of time expired subscriptions may be carried, and we are here in the same embarrassing situation in making a ruling. If this case stood alone, there would be no doubt as to the proper decision to make.

According to the views of publishers in general, a year and a half is not an excessive time to carry expired subscriptions. However, I regard the carrying of such a volume of expired subscriptions and for such a length of time, especially in such a low-priced publication, as a grave abuse, which leads to other abuses, and at any rate the publisher should not be allowed to base his sample-copy privilege on expired subscriptions, although it has never heretofore been held or contended that the sample-copy privilege must be based upon subscriptions not expired, and could not be based as well upon those legitimately carried as expired.

The publisher has repeatedly stated that he is ready to abide by any rule or limitation, once known, and that he asks only to be placed upon a level with others in his class.

I am, therefore, in justice required to state that there is no ground on which I could decide against the expired subscriptions in this case alone, however bad the conditions may be, until we formulate and publish a general rule applicable alike to all publishers in the same situation.

Alleged subscriptions rejected.—The investigating commission found in the course of its work many different classes of subscriptions and examined into each particular class. To all those secured by so-called clubbing arrangements with other publications, there is objection. The rule in Circular XXV applicable to them was quoted in the previous case. Under the last clause therein I hold, as in the first instance, that a publisher of any publication sold as low as 10 cents a year is not entitled to make any reduction whatever in the price to subscribers by any process whatever, directly or indirectly. I deem it proper to enforce such a rule here, and therefore reject all those where the alleged subscriptions were paid at less than the advertised price on the ground that they are at a nominal rate and do not constitute actual subscriptions. This is without deciding at this time whether or not the advertised price (10 cents) is itself a nominal rate, but merely holding that any reduction from that price affects a nominal rate or free circulation to that degree. In all those cases which have come to attention the reduction made to the subscriber by persons securing subscriptions was without the knowledge of the publisher; but he must be held responsible for those who act as his agents. The action in this instance is simply that of refusing to receive in the mails at the pound rate copies addressed to such alleged subscribers. The publisher's privilege to mail copies at the pound rate is held to be limited to those sent to subscribers and those sent as samples. Copies sent in fulfillment of these alleged subscriptions, if mailed at all, are subject to the transient rate, on the ground that the publisher in sending them is not doing so in his capacity as publisher. Under this rule subscriptions received through the following-named persons, firms, and institutions are rejected:

Name.	Address.	Number of subscriptions.
Green's Fruit Grower.....	Rochester, N. Y.....	407
Halleck, Wm. Penn.....	Harrisburg, Ill.....	30
Hake, Herbert.....	Council Bluffs, Iowa.....	355
McCracken, C. M. & Son.....	Liberty, Pa.....	5
Twentieth Century Publishing Co.....	Detroit, Mich.....	66
Vick Publishing Co.....	Rochester, N. Y.....	44
World Manufacturing Co.....	Cincinnati, Ohio.....	416
Seneca Kicker.....	Seneca, Pa.....	5
Columbus Dispatch.....	Columbus, Ohio.....	99
Burlington Hawkeye, The.....	Burlington, Iowa.....	130
Daily Drivers Telegram.....	Kansas City, Mo.....	46
Gallia County News.....	Gallipolis, Ohio.....	7
Gallia Times.....	do.....	8
Hearthstone (A. D. Porter Co.).....	New York, N. Y.....	237
Michigan Farmer.....	Detroit, Mich.....	50
Ohio Farmer.....	Cleveland, Ohio.....	167
Richmond Times Dispatch.....	Richmond, Va.....	14
Southern Vermont Mirror.....	Danby, Vt.....	39

Conclusion.—My decision is that under no existing rule did the publisher of The Woman's Farm Journal mail at the pound rate copies of his publication of the issues from October, 1905, to April, 1906, both inclusive, in excess of his privilege.

The following instructions will be sent to the postmaster:

"POSTMASTER,
"St. Louis, Mo.

"SIR: You are informed that, upon a hearing accorded the publisher of The Woman's Farm Journal April 30 and May 1, 1906, and an investigation of the subscription list of that publication, and the mailings of the issues thereof from October, 1905, to April, 1906, both inclusive, under the usual rules governing the department and applicable to all publications in similar situations, no copies in excess of the publisher's privileges were mailed at the pound rate. You are therefore directed to refund to the publisher the deposits in excess of the pound rate held by you pending this decision.

"In this connection you will inform the publisher that this decision is not to be considered as sanctioning in any particular the methods of securing subscriptions, or of the subscription price, or of approving the list of subscribers as legitimate, and that, concerning the expired subscriptions, especially is this decision not to be construed as an approval of the carrying of such a proportion for such a length of time, or of basing a sample copy privilege on expired subscriptions. In these regards he is simply given the benefit of the doubt in the absence of a definite rule applicable alike to all publishers.

"You will also inform the publisher that the subscriptions obtained by clubbing offers by persons acting as his agents—whether their practices were known to him or not—where the subscription price was in any degree reduced to the subscriber, it is held that such subscriptions are not in fact subscriptions, and therefore may not be included in the legitimate list of subscribers required by law; and that hereafter all copies mailed in fulfillment thereof shall be charged at the transient second-class rate prepaid by stamps affixed, because his privilege to mail copies at the pound rate is limited to those sent as to subscribers and as samples.

"The particular subscriptions rejected will be found on the accompanying sheet. If the publisher finds it difficult or impossible to segregate these subscriptions from his list so as to prepay them by stamps affixed, as required, you may, until he can accomplish the work of segregation, accept the transient rate on an equal number of copies to be prepaid in money, to be remitted to the department in canceled stamps attached to a sheet or sheets of paper, as is customary in such cases. Sixty days will be allowed the publisher to pay the postage on these copies in this manner, or so much of that time as may be necessary."

Respectfully submitted.

EDWIN C. MADDEN,
Third Assistant Postmaster General.

Hon. GEO. B. CORTELYOU, *Postmaster General.*

NOTE 1.—The estimate of the number of expired subscriptions to The Woman's Farm Journal is based on their being carried 16 months, it being found in the course of the investigation that a considerable percentage was carried for that length of time. In the absence of any rule or limitation no different decision would be justified, even though the expirations had been carried for a still greater period.

NOTE 2.—The figures in the table on The Woman's Farm Journal case indicate an excess mailing of about 3,000 copies of the issue of October, 1905, but as our figures are only estimates which might be thousands of copies out of the way, due to the variation in the weight per copy, and as, if the estimates of expirations were based on 18 instead of 16 months' credit, there would be no excess, it is deemed best to take no notice of the circumstance.

NOTE 3.—My decision on the second question (Section II) will be handed you at the earliest possible moment.

You are informed that, upon a hearing accorded the publisher of The Woman's Magazine, April 30 and May 1, 1906, and an investigation of the subscription list of that publication and the mailings of the issues thereof from October, 1905, to May, 1906, both inclusive, under the usual rules governing the department and applicable to all publications in similar situations, no copies in excess of the publisher's privilege were mailed at the pound rate. You are therefore directed to refund to the publisher the deposits in excess of the pound rate held by you pending this decision.

There would be a similar letter in the case of the Woman's Farm Journal. If the St. Louis postmaster were not satisfied with this decision, the way was now opened for him to appeal the case to the

Postmaster General under the provisions of section 16 of the Postal Laws and Regulations.

In this report the immorality of the entire procedure was brought to the attention of the Postmaster General by reciting what had been done in the case of the stock journals, and the intimation was quite plain that, even if the law and the facts had been to the contrary, it would have been immoral, in view of the favor shown the stock journals, for the department to insist upon its pound of flesh in the Lewis case.

On February 12 the Postmaster General wrote the Third Assistant to the effect that he was no longer to suspend the work of the reform of the abuses in the second class of mail matter, now that the Congressional Commission had reported to Congress. In the same letter he lifted his favor to the stock journals. However, he directed from now on a clear departure from the procedure which had been followed since the reform was begun, and which in a great measure was responsible for its acknowledged fairness and success, namely, that of dealing with publications in classes, giving publishers of like publications and in like situations the same treatment and the same opportunities. His order amounted to a direction to take up the case of each publication, regardless of its class, as it might be reached and without order or system, and regardless of whether there might be still worse abuses in the very same class in which the publication belonged and which should receive first attention. A compared copy of the Postmaster General's letter of February 12 is submitted herewith.

The Postmaster General had directed verbally that the February 7 decision of the Third Assistant be not made known.

FEBRUARY 12, 1907.

SIR: Upon the statement by you last summer, that your duties in connection with the preparation of the data for the Postal Commission, and the fact that such a commission had been established by Congress, would make it impracticable for you to take up and consider as in the usual course certain cases involving alleged abuses of the second-class mailing privilege, I approved of a postponement of action in such cases until the commission had made its report. Included among the cases of which the consideration was thus postponed were those involving certain stock journals passing in the mails as second-class publications, and which in your opinion were probably abusing seriously the privilege accorded to them.

As the report of the Postal Commission has now been made and submitted to Congress, it is my desire that all cases involving alleged abuses of the second-class mailing privilege be taken up by your office as promptly as possible and considered, and that there be no hesitancy about excluding from the mails as second-class matter all such publications as are found to be abusing that privilege in such manner as to violate the law and to subject the Post Office Department to losses of revenue.

Each of these cases should be dealt with upon the ascertained facts, and without reference to any other consideration than whether the methods and practices pursued are not violative of law and there is not resting upon the Post Office Department the duty of excluding the publications from the second class of mail matter.

Respectfully, yours,

GEO. B. CORTELYOU, *Postmaster General*.

HON. EDWIN C. MADDEN,
Third Assistant Postmaster General.

Mr. McCoy. To whom did he direct that?

Mr. MADDEN. To me, personally. There was no letter in that case. He simply told me not to make the decision until he authorized it.

On February 13 he came back at the Third Assistant with a 40-page letter of criticism of that decision. He demanded a review of the case and practically insisted that the decision be reversed.

A copy of his 40-page letter, called a "memorandum," is herewith submitted, marked Exhibit No. 28:

EXHIBIT No. 28.

MEMORANDUM.

The statutes governing the admission to the mails of matter of the second class, as included in the current edition of the Postal Laws and Regulations (secs. 427, 428, 444, 448, and 455) are quoted in your report in the matter of alleged excess mailings of the Woman's Magazine and the Woman's Farm Journal, published by the Lewis Publishing Co., of St. Louis, Mo. In addition to those sections the following regulations, issued from your office and found on pages 1040 and 1041 in the Official Postal Guide for January, 1905, should have consideration in this connection:

"Circular III.

POST OFFICE DEPARTMENT,
"OFFICE OF THE THIRD ASSISTANT POSTMASTER GENERAL,
"CLASSIFICATION DIVISION.

"7. Under the act of March 3, 1879, a publication to be admissible to the second class of mail matter must, in addition to complying with the other requirements of the law, have a 'legitimate list of subscribers.' This list of subscribers must be legitimate in its entirety. And the sending of copies free to the recipients thereof to a number in excess of the number sent to actual subscribers will be taken as evidence that the primary or chief purpose of the publication is not to meet a real demand on the part of subscribers, but to secure a forced circulation, within the prohibition of the statute against publications 'designed primarily for advertising purposes, or for free circulation, or for circulation at nominal rates.'

"8. The Postal Laws and Regulations do not prescribe how many copies shall be printed of each issue of a publication entitled to admission to the second class of mail matter, but it is required that at least 50 per cent of the total number of copies regularly printed and circulated, by mail or otherwise, shall be in response to a bona fide public demand for the publication on its merits; and this demand must be evidenced by the 'legitimate list of subscribers.'

"9. The legitimate list of subscribers required by the law is a list legitimate in its entirety—that is to say, each person listed thereon as a subscriber must be a subscriber in fact.

"The following are deemed to be subscribers within the meaning of the law, and may be included in making up such legitimate list:

"(a) Direct subscriptions to the publisher, or his agent, by those who voluntarily seek and pay for the publication with their own money. (An individual subscription designated as a bona fide gift and paid for by the donor for the benefit of the recipient will not be objected to; but such subscriptions will be limited strictly to those coming within that definition and will not be permitted to be used as a cover for an advertising or other purpose of the publisher or donor.)

"(b) Copies regularly sold by newsboys.

"(c) Copies regularly sold over the publisher's counter to purchasers of individual copies.

"(d) Bona fide bulk sales of consecutive issues to news agents for resale by them in the usual way without the privilege of returning the unsold copies.

"(e) Regular sales of copies of consecutive issues by news agents when not already counted under 'd.'

"(f) Copies regularly supplied to local agents for delivery to bona fide subscribers not already counted under 'a.'

"(g) Copies sent to advertisers—one copy to each—to prove insertion of advertisement.

"(h) Copies sent as bona fide 'exchanges' with existing second-class publications, one copy for another, within reasonable limits as to number.

"10. It is optional with the publisher as to the number of copies which he may print of any issue, but no copies other than those sent to persons who are subscribers within the meaning of the law may be mailed at the pound rate, except those sent as sample copies, and only when properly marked 'Sample copy' on the exposed face of the publication or its wrapper, or on the wrapper of the package which may contain a bulk number of sample copies. And the number of sample copies which may be mailed at the pound rate with any issue of a publication must not, as heretofore explained in paragraph 7, exceed the number of copies of that issue sent to subscribers; to say, at each issue of the publication the publisher may, for every copy sent

to a subscriber, mail one sample copy at the pound rate to a person not a subscriber. Sample copies must not be inclosed in the same package with copies intended for subscribers. (See sec. 456 Postal Laws and Regulations.)

"The sample-copy privilege is not cumulative; i. e., a publisher may not mail at the pound rate with any issue sample copies in excess of the number of subscribers, even though for several preceding issues no sample copies were mailed.

"11. Copies sent as samples to the same persons at the pound rate of postage in excess of three times, consecutively or otherwise, during any one calendar year, will be held not to be samples. (Par. 3, sec. 456, Postal Laws and Regulations.)

"12. If sample copies in excess of the number hereinbefore specified (see paragraph 10) be presented for mailing, they are not entitled to the pound rate of postage. They are chargeable with the transient second-class rate of 1 cent for each 4 ounces or fraction thereof, to be prepaid with stamps affixed on each separately addressed copy or package of unaddressed copies.

"13. In determining whether or not a publication is designed primarily for advertising purposes, or for free circulation, or for circulation at nominal rates, the department will, among other things, take into consideration as evidence of such a design the following practices:

"(a) The sending of copies free to the recipient under the claim that they are subscribers.

"(b) The regular or continuous circulation of sample copies in excess of the number provided for in paragraph 10, even though postage on the excess be prepaid at the transient second-class rate.

"(c) The sending of sample copies continuously to the same persons more than three times, consecutively or otherwise, during any one calendar year, even though the postage on the excess be prepaid at the transient second-class rate."

On page 3 of your report it is stated that the action of the postmaster at St. Louis, from which an appeal was taken to you by the Lewis Publishing Co., was under authority of the following ruling promulgated by you:

"If sample copies in excess of the number * * * (100 per cent of the subscription list), be presented for mailing, they are not entitled to the pound rate of postage. They are chargeable with the transient second-class rate of 1 cent for each 4 ounces or fraction thereof, to be prepaid with stamps affixed on each separately addressed copy or package of unaddressed copies."

Was not the action of the postmaster taken under authority of section 456 of the Postal Laws and Regulations of 1902, paragraph 6, as well as under that of the ruling just quoted, viz.—

"The mailing by a publisher, as sample copies, of a larger number of copies than actually subscribed for in order to maintain a given circulation, or the continuous mailing of sample copies in excess of 100 per cent of the number issued to regular subscribers, or of such copies continuously to the same persons, will be deemed evidence that the publication is primarily designed for advertising or free circulation (see sec. 428), and the sample copies should be detained until the facts can be ascertained. The postmaster will promptly report the case to the Third Assistant Postmaster General."

The postmaster also had to bear in mind the fact, as stated in your report on page 21, that "the publishers' privilege to mail copies at the pound rate is held to be limited to those sent to subscribers and those sent as samples." It appears from the tables in your report that from the month of October, 1905, to the month of April, 1906, inclusive, there were mailed hundreds of thousands of copies of the Woman's Magazine at the pound rate, which were neither sent to subscribers nor sent as samples. Was it not the sworn duty of the postmaster to collect postage on each one of these copies at the rate of 1 cent per copy? Was not the postmaster required by law, as well as the regulations, to proceed as he did, and had he failed to enforce collection of the postage which he actually collected, would he not have been liable upon his bond for the amount under section 4051 of the Revised Statutes (sec. 373, Postal Laws and Regulations, reading as follows:

"All postages, box rents, and other receipts at post offices shall be accounted for as part of the postal revenues; and each postmaster shall be charged with and held accountable for any part of the same accruing at his office, which he has neglected to collect, the same as if he had collected it."

That the department holds postmasters to strict accountability in this connection is shown by the following note under paragraph 318, page 1036, of the Postal Guide for 1905:

"NOTE.—Postmasters are reminded that under the law (sec. 373, Postal Laws and Regulations), they are liable on their official bonds for loss of revenue due to faulty administration or neglect."

THE WOMAN'S MAGAZINE.

The postmaster reported that of the November, 1905, issue of the Woman's Magazine there were mailed as to subscribers 486,305 copies in manila wrappers and 579,125 in blue wrappers; total, 1,065,430 copies. The postmaster also reported that but 574,165 copies of that issue were mailed as samples, the grand total of copies mailed being 1,639,595. Thus it appears by the postmaster's table that there was an alleged increase of 282,668 subscribers for the November issue of the magazine over those for the October issue. Even your own table shows an alleged increase in copies mailed as to subscribers of 134,554 for November over October, 1905, with only 4,905 increase in current subscriptions. Peculiar in this connection also is the alleged increase of 332,257 in copies mailed as to subscribers in April, 1906, over October, 1905, and a decrease in current subscriptions of 48,911 for the same period. What explanation is there for this?

The tables appearing on pages 4 and 8 of your report are reproduced below.

TOTAL MAILINGS (p. 4).

Copies.

Issues.	Subscribers.	Samples.	Total.
October, 1905.....	852,034	603,181	1,455,215
November, 1905.....	986,588	531,676	1,518,264
December, 1905.....	1,127,898	345,090	1,473,588
January, 1906.....	1,182,854	317,813	1,500,672
February, 1906.....	1,176,921	312,439	1,489,360
March, 1906.....	1,138,808	360,426	1,499,234
April, 1906.....	1,184,291	292,296	1,476,587

Subscriptions (p. 8).

Dates.	Current.	Expirations.	Total.
October, 1905.....	576,802	198,632	775,434
November, 1905.....	581,707	187,589	769,296
December, 1905.....	603,477	175,494	778,971
January, 1906.....	577,771	196,584	774,355
February, 1906.....	559,812	224,492	784,304
March, 1906.....	529,717	277,011	806,728
April, 1906.....	527,991	292,747	820,638

It will be seen by reference to the second of these tables that the number of copies of the publication claimed by the publisher as being sent to those whose subscriptions had expired, to wit, 579,000, is within 2,000 of the total current subscriptions, as shown on page 8 of your report.

From this large mailing of the November issue to persons whose subscriptions had expired it would appear that, as indicated in your report on page 10, the publisher was not, prior to the count of the postmaster and the inspectors, carrying on his list from 200,000 to nearly 300,000 names and addresses of such expirations in the hope or expectation of securing renewals. Had he been doing this prior to that count, it would not have been necessary for him to have sent this large number of expirations with the November issue.

The question before you for decision is thus stated in your report:

"The question is simply one of fact. Did the publisher under the ruling quoted on page 3 mail at the pound rate more copies of either publication than he was entitled to mail; and if so, to what extent did he exceed his privilege?"

Further you say:

"The decision of this question depends entirely upon the number of subscribers; that is to say, in order to decide as to whether there was or was not an excess mailing at the pound rate it is necessary to find whether the persons whose names and addresses appear on the publisher's list as subscribers are such as a matter of fact, and the whole number of them, the publisher under the ruling being entitled to mail an equal number of copies at the pound rate as samples."

Then it is said that:

"Whether the persons on the list are subscribers can not be decided upon the methods of the publishers in securing their subscriptions, but the result of the methods may be used in finding whether or not the persons whose names and addresses were found on the list were in fact actual subscribers; that is to say, the question of whether or not such persons are in truth subscribers turns not upon the matter of how they subscribed, or how they were secured, but is one of fact. Did they subscribe?"

The statement that "whether the persons on the list are subscribers can not be decided upon the methods of the publisher in securing their subscriptions" seems to be contradictory to paragraphs (a), (b), (c), (d), (e), (f), (g), (i), and (j), of your circular of December 16, 1905.

On pages 5 and 6 of your report you say:

"Consideration must be given to the circumstance that this publication is sold at a very low rate, and naturally the publisher could not afford a too expensive system in the securing, classifying, handling, and accounting methods. The publisher stated at the hearing before this office substantially that he had sought to observe every known rule and limitation of the Post Office Department in the conduct of his business, and if it were found that any practice or method of his was in conflict with the rules he would immediately amend the same, for he stood ready to meet all requirements as soon as he could find out what those requirements were."

It has been claimed by the Lewis Publishing Co. that it conducts the most profitable publishing business in the world. Accepting this claim as true, why should the company be excused for failing to install and keep an adequate and accurate system of records and accounts, from which the true condition of its business could be ascertained and its methods and practices in respect of its second-class mailing privilege shown to be in conformity with law and postal regulations?

If it be true that the subscription price is so low that the publisher can not afford to keep accurate accounts, so that his minutes will bear investigation, then it would seem that the subscription price must be merely nominal, and that that ought not to excuse him from keeping such accounts.

On page 7 of your report you say:

"The report of the commission and the voluminous exhibits accompanying it show the exactness and closeness of scrutiny in the work as a whole.

"The result of every test is favorable to the publisher, and where inquiries were addressed to the subscribers themselves the replies favored him to an average of about 90 per cent or over."

This statement of the percentage of instances in which the claims made by the publisher were substantiated is in striking contrast with the report of the postmaster at St. Louis, which shows that an average of only 56 per cent of persons claimed as subscribers, and in respect of whom inquiries were made of postmasters at the post offices of address at the rate of 1,000 a month, were actual subscribers.

The table on page 4 is supposed to represent the actual mailings of the Woman's Magazine for the months stated, consisting of regular subscriptions and samples. The table on page 8 is said to represent the copies of the publication for those months which the publisher was entitled to mail, as ascertained by an actual count of subscribers' orders, by the commission, including those expired. It appears that at the time this count was made (October, 1905), the publisher was not treating subscriptions which had expired more than three months previously as legitimate subscriptions; but conceding that they should be so regarded to the extent indicated by your second table, the total number of subscriptions to which he was entitled by your count of subscription orders, as shown by that table, is much less each month than the number that the publisher mailed as regular subscriptions alone, according to your first table; the difference ranging from over 76,000 in October, 1905, to over 408,000 in January, 1906. In April, 1906, the difference was about 363,000. What explanation can you give for regarding as actual subscribers persons to whom copies are sent so largely in excess of the number found by your commission to be entitled to go at the pound rate, even though expired subscriptions be included? The excuse offered is:

"The totals given in the foregoing table, it will be seen, do not agree with the estimates made from the pounds mailed as shown by the receipts issued by the postmaster. They are considerably less in each case; but at every mailing covered by the investigation the list of current subscriptions fairly allowable under the rules, excluding expirations (credits), was more than the number of sample copies mailed, with two exceptions—that of the October, 1905, issue and that of the May, 1906, issue. The current subscriptions for those issues, excluding expirations, were for October, 1905, 576,802, while it appears from the estimate made from the postmaster's record of weight that 603,181 sample copies of that issue were mailed; and for the May, 1906, issue 527,891 current subscriptions were found, while the estimate of the mailing of sample copies

is 547,701. Therefore, except for those issues, the question of whether the publisher exceeded his privilege to mail copies at the pound rate is easily and clearly disposed of. Whether or not there were excess mailings with the issue of October, 1905, and May, 1906, turns upon the question of whether the so-called 'expirations' are allowable. If allowable, the publisher is more than safely within his privilege; indeed, he might have mailed many thousand more."

The reference in the foregoing statement to the month of May, 1906, is evidently intended for April, 1906, as shown in the two tables. It is said that while for the May, 1906, issue 578,811 current subscriptions were found, the extent of the mailing of sample copies as taken from the postmaster's record of weight is 547,701. As a matter of fact the table on page 4 shows the number of sample copies mailed in the month of April, 1906, as 292,296, instead of 547,701; the discrepancy being over 255,000. How do you explain this discrepancy?

Your statement that the totals of copies actually mailed do not agree with the estimates made by you, but that at every mailing covered by the investigation the list of current subscriptions fairly allowable under the rules, excluding expirations (credits), was more than the number of sample copies mailed, with but two exceptions, may explain the large mailings as samples, but it does not explain or excuse the mailing as subscription copies of copies largely in excess of the number which, according to your estimate, the publisher was entitled to mail during the months shown in the table. The contention of the postmaster at St. Louis is not alone that the publisher has mailed sample copies, so marked, in excess of the number he was entitled to mail, but that he has mailed as going to subscribers copies of the publication largely in excess of the number entitled by law to be so transmitted. The publisher is required under the regulations to mark "Sample copy" on the exposed face of every sample copy, or its wrapper, or on the wrapper of the package which may contain a bulk number of such copies. Also under paragraph b, section 317, page 1036, of the Postal Guide for January, 1905, the publisher is required to "make separate packages (or sacks) of (1) samples, (2) of other copies subject to postage at the pound rate, and (3) copies entitled to free county circulation; and when so presented each kind must be weighed separately, fractions being counted full pounds in all cases. * * * and so recorded in the receipt book."

The publisher offered, and the postmaster accepted, as mailed to actual subscribers the following number of copies for the months shown below, in excess of the number which you report him to have been entitled so to mail, even with the inclusion of expired subscriptions:

Copies.

Issues.	Number mailed.	Number entitled to mail.	Excess.
October, 1905.....	852,034	775,434	76,600
November, 1905.....	986,588	762,296	224,292
December, 1905.....	1,127,898	778,971	348,927
January, 1906.....	1,182,854	774,355	408,499
February, 1906.....	1,176,921	784,304	392,617
March, 1906.....	1,138,868	806,728	332,140
April, 1906.....	1,184,291	820,638	363,653
Total.....			2,146,728
Average monthly.....			306,675

Your own estimate shows that the postmaster was under official obligation to collect postage on these excessive mailings, approximately in the amounts in which he did make collections, beginning with April 1906.

The statement accredited to the publisher that he carried subscriptions on his list six months with the expectation of securing renewals, and that the investigation disclosed that some of the subscriptions were carried six and two-fifths months, and in some cases as long as eight months, due to the methods employed, appears absolutely inconsistent with the notices carried in his publication at the time of the investigation by the post-office inspectors, and quoted below:

"Discontinuances. Subscribers wishing the Woman's Magazine stopped at the expiration of their subscription need not notify us to that effect, we shall consider it their wish to have it discontinued if they do not renew promptly when notified that the time paid for has expired.

"If you find this paragraph marked, it means that your time is out and that we will stop sending the magazine if not renewed within 30 days. We don't want to lose you

so please renew at once. If your paper comes in a blue wrapper, it is also a notice to you that your subscription has expired."

Beginning with the May, 1906, mailing of the June issue of the Woman's Magazine, the 30-day discontinuance rule was dropped and the following notice substituted:

"Discontinuances. Subscribers wishing the Woman's Magazine discontinued need not notify us to that effect; we shall consider it their wish if they do not renew after having been notified that the time paid for has expired."

"If you find this paragraph marked it means that your advance payment is out and that we will stop sending the magazine if not renewed. We don't want to lose you so please renew at once. If your paper comes in a blue wrapper it is also a notice to you that your paid in advance time has expired."

This statement of the publisher is also contradicted by Miss Eleanor Jones, who was a forewoman in charge of the addressing department of the Lewis Publishing Co. from May, 1902, to August, 1905, and who makes affidavit that expired subscriptions were withdrawn from the current files of the Woman's Magazine after three months, and were not thereafter used as current subscriptions or expired subscriptions, and that the publication was not thereafter mailed to such former subscribers except as sample copies not to exceed three times a year. Her affidavit also states that it was the custom to use blue wrappers upon copies sent to those whose subscriptions have expired, as long as their names were retained in the files. Miss Jones is of known reliability and standing, and her statement in this and other respects bearing on the methods employed by the publishing company are supported by those of her sister, Miss May Jones, and two other employees of the publisher, whose affidavits were taken. These affidavits are before me. Furthermore, when the inspectors and the postmaster made their count on October 13, 1905, they found that the card records containing names of persons whose subscriptions had expired from three months to three years prior thereto, were secured by rubber bands, which were so rotten that when the bundles were opened the bands fell to the floor in pieces, indicating clearly that these records were not being used regularly for mailing purposes, as claimed; while the current card files were wrapped with fresh rubber bands and indicated continued and regular use.

The publisher's statement seems to be disproved by the fact that on October 20, seven days after the inspector's count, according to the postmaster's figures, there were mailed as to regular subscribers 579,125 copies of the November, 1905, issue, in blue wrappers (indicating that the subscription had expired), which was within 2,000 of the number of current subscribers that you credit him with having. This in itself would condemn the publisher under the ruling quoted on page 10 of your report, for the reason that according to your figures he mailed with this issue 936,557 copies of the publication as sample copies and to persons whose subscriptions had expired, as against a current subscription list conceded by you for that month of 581,707; an excess of 354,850 copies sent "free to the recipients thereof," over those sent to subscribers and paid for.

On page 10 of your report it is said:

"No satisfactory basis for a calculation as to what percentage of the expired subscriptions were actually renewed was found. If renewals were made after the expiration of a period of eight months (some were carried even longer), the original evidence of subscription had by that time been destroyed and the renewals were counted as original subscriptions are counted. It turns out, then, that a person who had subscribed for one year and who had not renewed at the end of the year would be carried on the publisher's books as a subscriber for six months and possibly eight months. If he renewed within that time his subscription was dated to begin at the expiration of the old. If at the end of six or eight months he would fail to renew, six or eight copies, as the case might be, would have been sent him free. If he had renewed after eight months, which appears to have been true in some thousands of cases, the subscriber would be treated as new, no charge being made for the copies over and above the number due him on the previous subscription. This might happen over and over again with the same subscriber."

In the thousands of cases referred to in the above statement, one of two conditions must have existed; either the person receiving the publication for eight months after his subscription had expired was a subscriber, or he was not a subscriber. If the latter, he was receiving the paper as a sample copy for eight months after his subscription had expired, and the publisher was violating the provisions of the regulation prohibiting the sending of sample copies more than three times a year to one person. Of course such copies should have been prepaid each with a 1-cent stamp.

If the former, the publisher, was furnishing the publication 20 months for 10 cents, which, under your ruling as given on page 21 of your report, was a nominal price. The effect of this practice was to reduce the annual subscription price in all such cases to 6 cents per annum. They could not, therefore, properly be regarded as

legitimate subscriptions, and each copy so mailed to any such subscriber after the date of expiration of his subscription should have been prepaid with a 1-cent stamp.

Considering further the question of nominal rates, it is observed that while in October, 1905, according to your statement, the publisher had 576,802 subscribers, he mailed for that month 1,455,215 copies. If, therefore, the advertised price of 10 cents per annum was received on each of his current subscriptions, the publisher obtained \$57,680.20 for copies going twelve times per annum to 1,455,215 persons, or at the rate of 3.9 cents per copy per annum for the copies mailed for that month. Why did this not reduce the subscription price to the nominal rate, and how can it be claimed that the issue of the publication for that month was entitled to transmission at the pound rate?

It is observed that for the year ending December 31, 1905, according to page 14 of your report, the moneys received on account of subscriptions to the *Woman's Magazine* were \$50,100.04, while according to page 4 of that report the publisher was mailing an average of 1,482,355 copies of the publication monthly, thus reducing the annual subscription price on those mailed to approximately 3½ cents per copy per annum. Using these figures as a basis, it appears that while \$50,100 was received for subscriptions, the publisher was paying for postage at the pound rate over \$36,000 per annum, making his net receipts from subscriptions about \$14,000 per annum, while he mailed an average of about one and one-half million copies monthly. His compensation, therefore, for each copy per annum was about nine-tenths of 1 cent. If this is not a nominal rate, it would appear to be impossible to find one.

On page 11 of your report you say:

"There is no authority of law for holding that a subscription must be paid in advance, and no authority of law for holding that every subscription terminates at the expiration of the period for which it is written. It is upon this construction, existing since the passage of the act of March 3, 1879, that the carrying of expired subscriptions is permissible. Of course, no publisher secures a renewal of every subscription carried as a credit after expiration. That could not be expected. It is, however, reasonable to expect that a publisher should be able to show that he does secure a fair percentage of renewals from the persons he carries. He should indeed be able to show that at least two out of every three, and certainly as many as three out of every five actually renewed. If such a rule had been in existence and applied to this particular case, we should probably rule out a great percentage of the number of subscriptions carried as expirations."

You say there is no authority of law for holding that subscriptions must be paid in advance, and that every subscription terminates at the expiration of the period for which it is written; yet in the *Official Postal Guide* for January, 1905, on page 1041, it is said that "subscribers within the meaning of the law" include those who "voluntarily seek and pay for the publication with their own money."

How do you reach the conclusion that persons carried as subscribers six or eight months after the expiration of their subscriptions, and who have indicated no intention or desire whatever that the subscriptions be continued, and who, according to the publisher's advertised rule, will not be recognized as subscribers beyond 30 days after the expiration of their subscriptions, are legitimate subscribers? Is it fair or logical to place in the same class, and deal with alike, publishers who number their subscribers by the hundreds of thousands and who address themselves to the entire country, and publishers of country weeklies who are constantly in close touch with their patrons and have either personal acquaintance with them or accurate knowledge of their integrity and financial ability? In the case of the large publisher expired subscriptions are carried for the clear purpose of being used as the basis for the circulation of sample copies at the pound rate of postage. In the case of the country publisher, there is no such purpose. In the present case the publisher has announced to all of his subscribers that if they wish the magazine stopped at the expiration of their subscription, they need not give notice to that effect; that it will be considered their wish that the publication be discontinued if they do not renew promptly when notified that the time paid for has expired.

They are further informed:

"If you find this paragraph marked it means that your time is out, and that we will stop sending the magazine if not renewed within 30 days."

Is not the publisher to be bound by the rule which he himself has established and announced to all his subscribers? How can he be allowed to claim as subscribers persons whose subscriptions have expired for periods of 6 to 8 months, when he has declared that they will not be recognized as subscribers after 30 days beyond the date of expiration of their subscriptions?

Significant in this connection is the fact that after the inspectors' investigation, and when your commission took up their investigation at St. Louis, in May, 1906, the

publisher changed these standing notices; and in the June number, eliminated the 30-day expiration rule, showing an acute change in his policy of treating expired subscriptions. I am informed that until the inspectors' count the publisher followed the 30-day rule and did not carry expired subscriptions as he now represents to you. He also, after this count, changed his system of mailing, which action, according to his own employee (Mr. Miller), was to confuse the post-office authorities who were trying to ascertain the extent of his legitimate subscription list. What motive can be assigned for this sudden change of policy other than that of covering up excessive mailings prior to the investigation by the postmaster and post-office inspectors in October, 1905, and to safeguard like irregular practices in the future against detection?

In the case of the country weekly, on the contrary, the publisher accepts credit of the subscriber upon faith that he has ability and inclination to pay for the publication, and that he desires it to be continued. He would have no motive in sending the paper to a subscriber whose term had expired, other than that of finally obtaining payment for the publication.

In the case of the mail-order publisher only a small percentage of renewals are obtained from persons whose subscriptions have expired and who continue to be carried as subscribers; while with the country weekly, practically all of such persons so carried renew their subscriptions.

Should a publication of this kind, characterized by you as a mail-order publication, be classed with either the country press or with the large and established magazines which are desired for their literary merit, and which are sold for substantial prices at news stands, and generally mailed in bulk, only a small proportion being sent in single wrappers to individuals through the mails?

On page 12 of your report you state:

"So far we have never had any ruling at all on this subject other than the one quoted from Circular XXV, and it is indefinite as to proportion and length of time, and so far as it goes has not yet been applied in a single case."

The provision of the circular referred to is—

"Expiration subscriptions may be carried when necessary for a sufficient time to enable the publisher to ascertain whether it is the intention to renew. After the expiration of such reasonable time they will no longer be recognized as actual subscriptions, and in all cases the ratio of expired subscriptions to the whole list, irrespective of time carried, will be considered and given weight in determining the legitimacy of lists of subscribers and the primary design of the publication."

Do not Sections II and VIII of the syllabus prepared in your office on decision of the supreme court of the District of Columbia in the case of *Conant v. Postmaster General* apply to this case? The sections read as follows:

"II. Where a considerable portion of the persons listed as subscribers appear to be those whose subscriptions have expired; held, that such persons could not reasonably be counted as a part of the legitimate list of subscribers.

"VIII. While the statute does not put any express limitations upon the number of sample copies circulated, such copies must be samples in fact, and the publisher wishing to obtain the benefit of the section must show the utmost good faith, and not attempt to evade it by any device."

According to your table the current subscriptions for November of 1905 were 581,707; the mailings that month to those whose subscriptions had expired were 404,881 copies, and in addition to this there were 531,676 samples, so marked. Considering the large number of samples mailed that month, is not 404,881 copies a "considerable portion," within the meaning of Paragraph II of the above-mentioned syllabus? If so, should it not be held (as it was in the *Conant* case) that such persons could not reasonably be counted as a part of the legitimate list of subscribers?

Should not the lack of "utmost good faith" on the part of this publisher, and his attempt to "evade" by "devices" the limitations upon the sample copy privilege, be applied to this particular case, as referred to in Paragraph VIII of the syllabus above quoted?

On page 20 of your report you quote a provision of Circular XXV as to rates and numbers of subscriptions, and state that ruling of Circular XXV to be applicable to this case. Why is one ruling of the circular applicable and not another? And what is the basis of your construction on page 10 of your report that the expired subscription ruling in Circular XXV does not go to the legitimacy of lists of subscribers as applied to excess mailings, as well as to the primary design of the publication? In this connection attention is called to the January, 1905, Postal Guide, page 1040, paragraph 7, which states:

"Under the act of March 3, 1879, a publication, to be admissible to the second class of mail matter, must, in addition to complying with the other requirements of the law, have a 'legitimate list of subscribers.' This list of subscribers must be legiti-

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mate in its entirety. And the sending of copies free to the recipients thereof to a number in excess of the number sent to actual subscribers will be taken as evidence that the primary or chief purpose of the publication is not to meet a real demand on the part of subscribers but to secure a forced circulation, within the prohibition of the statute against publications designed primarily for advertising purposes, or for free circulation, or for circulation at nominal rates."

According to your own tables, it is shown that this publisher is sending free each month copies of the Woman's Magazine in the following numbers in excess of those sent to actual subscribers:

October, 1905.....	852, 034 775, 434	76, 000
November, 1905.....	986, 588 762, 296	224, 292
December, 1905.....	1, 127, 898 778, 971	348, 927
January, 1906.....	1, 182, 854 774, 355	408, 499
February, 1906.....	1, 176, 921 784, 304	392, 617
March, 1906.....	1, 138, 868 806, 728	332, 140
April, 1906.....	1, 184, 291 820, 638	363, 653
Total excess.....		2, 146, 728

making, according to your table, 2,146,728 copies of the Woman's Magazine which were mailed neither to subscribers nor as sample copies. It was evidently the duty of the postmaster, under the regulations, to collect advance postage on these copies at the rate of 1 cent a copy, which would amount to \$21,467.28. Waiving the provisions of Circular XXV, under what construction of this rule can it be held that these copies of the paper were entitled to admission to the mails at the pound rate? It is shown beyond controversy, and is admitted, that they were not sent either as current or expired subscriptions. Neither were they marked and sent as samples, as is required by the regulations. Is it possible that the publishers, by refusing to obey the regulations requiring sample copies to be so marked, can be permitted to send out any number of copies to persons who are not subscribers, at the pound rate?

Further, under what construction, as argued on page 10 of your report, can copies of the publication sent free in excess of the number sent to actual subscribers come within the prohibition of the statute, as applied to the question of primary design of the publication, and yet not come within such prohibition as applied to a question of excess mailings? Attention is called to your conclusion on page 14, "but it is not clear that the income from subscriptions, both new and renewals, indicates a percentage of renewals great enough to warrant the carrying of such a proportion of expirations," and also to the fact that, while from December, 1905, to April 1906, both inclusive, copies mailed by him to persons whose subscriptions had expired, according to your table on page 8, gradually increased from 175,494 to 292,747, yet the current subscriptions decreased from 603,477 to 527,891.

Under what construction do you hold that there is no reduction from the nominal price in a case where the publication, as in this instance, is sent in many thousands of cases free for eight months after the subscription term has expired, or a total of 20 months for the annual subscription price of 10 cents, or at the rate of 6 cents per annum, while holding that there is a reduction from the nominal price when under a clubbing arrangement the publication is sent at a price of 6 cents per annum or less, as indicated on pages 21 and 22 of your report?

The table on page 8 of your report shows the publisher to be entitled, in your judgment, to carry expired subscriptions for the month of December, 1905, to the number of 175,494, and his current subscription for that month to be 603,477. That table also shows that, in your opinion, the publisher was entitled to carry for the month of

April, 1906, expired subscriptions to the number of 292,747, and that his current subscriptions were 527,891. Thus, it is indicated that the current subscriptions to the publication for the month of April were 75,586 less in number than those for the month of December preceding; but you have allowed as legitimate for the latter month 117,253 more expired subscriptions to the publication than you have allowed for the former. The claiming by the publisher of this additional number of expired subscriptions seems to admit of but one interpretation, viz, that he requires that number to free himself from the charge of mailing in April more copies than he was legally entitled to mail. But how do you reach the conclusion that such a claim is proper and that the publisher should have the benefit of what seems to be a mere subterfuge?

Why, for the month of October, 1905, is this publisher granted such extended expiration privileges to either magazine; when, according to the statement of his ex-employees, the inspectors, the postmaster, and his 50 clerks, who made the count October 13, 1905, he was not using his expired subscriptions regularly to exceed four months in the case of the Woman's Farm Journal, or to exceed three months in the case of the Woman's Magazine? If, as stated by you on page 12, the necessity of a rule fixing definitely the proportion of expired subscriptions which may be carried, and the time for which they may be carried, has frequently been felt, why has not such a rule been made? And if, as you state on page 15 of your report, the publisher of the Woman's Magazine is violating the spirit of the second-class privilege, why is not such a rule now applied?

On page 20 you say:

"I hold that the publisher of any publication sold as low as 10 cents a year is not entitled to make any reduction whatever in the price to subscribers by any process whatever directly or indirectly. I deem it proper to enforce such a ruling in this instance, and therefore reject all those subscriptions where the alleged subscribers paid less than the advertised price, on the ground that they do not constitute actual subscriptions."

How, then, can you hold that persons whose subscriptions have expired and whose names are carried for eight months thereafter, and who, upon renewing subscription, receive the publication at the fixed price of 10 cents from and after the date of the renewal, are legitimate subscribers? Is not the total term for which the publication is thus received by such persons at the price of 10 cents 20 months? In other words, the publication is paid for 12 months, and at the end of that time the publisher continues to send it for 8 months longer without charge. Does not the publication thus go to the subscriber, whose subscription has expired for 8 months, at the rate of 6 cents per annum? And do you not hold any subscription rate below 10 cents per annum to be nominal? You say, moreover, that the proceedings outlined occur over and over again, and it is clear that each repetition reduces still further the annual subscription rate. The effect, of course, is precisely the same whether the subscription is renewed or not after 8 months from expiration.

On page 16 of your report you state:

"During this publisher's trouble with the postmaster at St. Louis a considerable sentiment in his behalf was created throughout the country. Many people seemed to believe that he was being abused or ill-treated, and some, as a measure of assistance to him, paid for copies of the Woman's Magazine to be sent to third persons which the publisher himself should select. Large numbers of copies were sent out under this arrangement, but it was only a temporary condition and applied to only occasional issues. Under the rules of Circular XXV, if in force, the great bulk of the alleged subscriptions paid for in this way would not be acceptable at the pound rate. They would not be subject to the transient rate of 1 cent for each 4 ounces or fraction. That rule, as you will recall, has been set aside in the case of the stock journals, which are by far the worst offenders in this regard in the country. Their practices are one of the worst abuses of the second-class privilege. The circumstance that we suspended this rule in the case of the stock journals makes it impossible in fairness to now apply the rule to the Woman's Magazine, especially so because in that case it was but a small fraction of the whole circulation to subscribers, while in the case of the stock journals it constitutes the bulk of their circulation and is the basis of their so-called legitimate list of subscribers. With them the practice is permanent and continuous in the face of their knowledge of the department's ruling, while so far as we know this publisher is ignorant of the ruling. Another reason why it would be unfair to enforce this ruling in this instance is that recently when the ruling was brought to the judicial test in the case of the Iowa Homestead and the department was sustained by the courts we refunded to the publisher the 4-ounce rate and permitted the copies paid for by others to be mailed at a cent a pound to the end of the publisher's contract with the persons interested in the circulation of the paper for business reasons."

On what information is your statement based that for reasons of sympathy with this publisher, because of his "trouble" with the postmaster at St. Louis, many people, as a measure of assistance to him, paid for copies of the Woman's Magazine to be sent to third persons whom the publisher himself should select, and that under this arrangement large numbers of copies were mailed, but that it was only a temporary condition and applied only to occasional issues?

My information is that the "trouble" of the publisher with the postmaster at St. Louis did not begin until October 11, 1905. The publisher, however, has declared in a letter dated November 20, 1905, that as early as the previous June he had mailed 48,544 copies of the Woman's Magazine to persons whose subscriptions were paid for from a special fund of \$10,000 provided by his friends and sympathizers, and that the names of such persons had been selected by him at his discretion. In the same letter the publisher stated that he sent in a similar fashion 92,100 copies of this publication for July, 60,090 copies for August, and 85,147 copies for September. The publisher has failed to substantiate his statements as to the existence of any such fund or that any such contributions have been made; nevertheless, his claim is that there was such a fund, and the effect of his statements is that it was in existence prior to the time when his trouble with the postmaster began. Have you any information as to the amount of such contributions, and by whom they were made? If so, please furnish it.

On page 17 you state that these paid-for-by-others subscriptions, which you state were sent out in large numbers, would not be acceptable at the pound rate under the rules of Circular XXV, if in force. That circular, which was issued December 16, 1905, was sent to the postmasters at St. Louis and other cities with instructions to notify publishers and to make it effective April 1, 1906. The postmaster so notified this publisher in the latter part of December, 1905, and on April 6 took action under such instructions by charging the transient second-class postage on such excess mailings.

Among the instructions as to examination of second-class matter on page 1036 of the January, 1905, Postal Guide, of which the postmaster was obliged to take cognizance, is the following:

"Postmasters are reminded that under the law (sec. 373, Postal Laws and Regulations) they are liable on their official bonds for loss of revenue due to faulty administration or neglect."

In addition to this, your letter of April 6, 1906, to the postmaster at St. Louis, in answer to an inquiry as to whether he should take action on the April, 1906, mailings of this publication, states:

"Inasmuch, however, as it is the duty of the postmaster to charge the lawful rate on matter passing through his hands it would be your duty, whenever the facts before you justify you in holding that the copies are in fact excess copies, to charge upon such excess the rate I have already mentioned—namely, the transient second-class rate."

Why was the action of the postmaster not proper, and why should not the money collected by him be retained, when he acted directly under your instructions? Have you at any time notified the postmasters of the country that the provisions of Circular XXV were suspended or revoked?

Apropos of the statement of this publisher that "he had sought to observe every known rule and limitation of the Post Office Department in the conduct of his business, and if it were found that any practice or method of his was in conflict with the rules, he would immediately amend the same, for he stood ready to meet all requirements as soon as he could find out what those requirements were," your attention is directed to the following statement taken from a letter written by F. J. Cabot, the secretary of the company, to one of its employees:

"In other words, the less they (Post Office Department) know of our business the better. I have nothing to hide, but I'll be d—d if I want them to run our business or even know what we are doing."

The refunding of the 4-ounce rate to the publisher of the Iowa Homestead, referred to by you on page 17 of your report, was recommended by you, and the memorandum signed by you, now in the case, was prepared in your office and submitted to me by you with your recommendation that I approve it. The circumstances in that case were peculiar to that publication, and it was solely by reason of those special circumstances, as stated in the memorandum, that the course recommended by you was pursued. It is shown by your report that the position taken by the department in that case, namely, that subscriptions paid for by others were not legitimate, was sustained by the courts. This being true, why is the department not warranted in making the most of that decision and treating as illegitimate such subscriptions in this case, in respect of which you state your belief "that the publisher of the Woman's Magazine is violating the spirit of the second-class privilege," etc.?

That other publishers are abusing the second-class privilege is of no relevancy in the consideration of this case. In the two instances you have cited, in which, as a

matter of fact, there has been as yet no such thorough investigation as has been made in this case, action was merely suspended pending a report of the Postal Commission, with the distinct instruction conveyed by me that if no legislation was enacted by Congress the cases should be taken up for disposition under our present statutes. When you have sufficient information that other publisher, are guilty of such flagrant abuses, then your duty will be plain; you should promptly take up such cases and deal with them according to the law and the facts. Neither is it proper that in deciding this case you should take into view the question of expediency or policy. Your decision in this matter should be based exclusively upon the law under which you are proceeding and the evidence before you. Nor is it important whether the investigation was instituted upon your motion or at the instance of the Postmaster General or some other officer of the Post Office Department; the abuses must be corrected whether discovered by officers of your bureau or those of other bureaus of the Post Office Department. Your instructions were to take this case under consideration, examine all the evidence available, and to base your decision solely upon the law and the evidence.

You notified me when this case was submitted to you that you expected shortly to take up the consideration of this class of periodicals. Why is not your investigation in this case, which you say on page 18 of your report "is unusual in that so far as known never before have any publisher's business methods been subjected to such a raking scrutiny," properly the beginning of such scrutiny of such periodicals? As you say, on page 19 of your report, "the wisdom of singling out one or two publications to be dealt with in advance of being ready administratively to handle the class as a whole may well be doubted," and its unwisdom as a general proposition was fully realized by me when the case was turned over to you. There can be, however, no question as to my duty and yours in dealing with practices which are illegitimate when found in any class of publications, to which existing law and regulations properly apply. This aspect of the case was fully understood, and my desires concerning it clearly stated in repeated conferences with you regarding the case. According to your own figures, it is not necessary to deal with the abuses peculiar to any particular class of publications to find in this case practices which when disclosed in the business of any publisher call for departmental action.

On page 19 of your report you state:

"If the postmaster conceived the Woman's Magazine to be an abuse, in whole or in part, of the second-class privileges, it was his duty to report his reasons for so believing to the Third Assistant Postmaster General and await instructions. It was wrong for him to proceed on his own motion and according to his own methods and judgment."

This is precisely what the postmaster did, as shown by his letters to you of November 11, 1905, and March 15 and April 2, 1906, which should be on file in your office with copies of your replies thereto. His action in collecting postage was not taken until April 6, subsequent to the date of his communications to you, and in taking that action he was simply obeying the Postal Laws and Regulations and the orders from your bureau, and he would have been derelict if he had not done so. If "it was wrong for him to proceed on his own motion and according to his own methods and judgment" in these matters, then the regulations with which he complied should be rescinded.

You state that whether this publisher be good or bad has nothing to do with the question of rate of postage on his periodicals. This is true, but have you given due consideration to the bearing the department's repeated experiences with him must have on his important and material statements? You have practically accepted as true those statements in so far as they pertain to the methods of treatment of expirations, as against the statements of the postmaster and his 50 clerks, the inspectors, and of reputable employees and ex-employees of the publisher, who state exactly the contrary. And are not these statements of the publisher discredited by your findings as exhibited by your report? Especially should his statements be carefully investigated when he states, as he does in a letter dated March 14, 1905, that "the paid-in-advance subscription to the Woman's Magazine is 1,250,000," as against your finding of approximately 565,300, and that "the paid-in-advance subscription to the Woman's Farm Journal is in advance of 500,000," as against your finding of approximately 182,150.

Applying the rule announced by you in your Circular XXV, you have rejected subscriptions from the Woman's Magazine to the number of 24,115, for the reason that such subscriptions were secured by so-called "clubbing" arrangements with other publications, which you hold to be objectionable. Your objection is that such subscriptions were paid for at less than the advertised price; so much less, indeed, as to make the subscription rate merely nominal. But, while rejecting those subscriptions and declaring them to be illegitimate, you propose to direct the postmaster to return to the publisher the money collected upon copies sent in pursuance of such subscriptions as

well as copies sent as samples upon that basis from October, 1905, to the present time—approximately \$7,716.80. If these subscriptions are illegitimate, then how can you hold that copies of the publication which have been sent heretofore to such subscribers and sample copies in equal number are entitled to transmission at the pound rate of postage?

THE WOMAN'S FARM JOURNAL.

It appears from your report that you regard the situations of the Woman's Magazine and the Woman's Farm Journal as quite similar and that you based your action in both cases upon practically the same reasons. The general queries put to you in reference to the former publication are therefore to be taken as applying similarly to the latter.

You state that the question in this (Farm Journal) case "depends upon the decision to be made as to expiration subscriptions. If allowed, he is within his privilege; if disallowed, he has exceeded his privilege." It appears that the question does not depend upon the matter of expired subscriptions alone, for the reason that copies of the October (1905) issue of this publication included in manila wrappers were not mailed as going to persons whose subscriptions had expired, as claimed by the publisher. The publisher mailed in October copies of the October issue about equal in number to his legitimate subscription list, of which 167,605 were in white wrappers, as is testified to by inspectors, the postmaster, and employees and ex-employees of the publisher. He mailed 144,930 copies of that issue in manila wrappers, and 38,255 copies in blue wrappers. The total number of copies mailed in the three kinds of wrappers (white, manila, and blue), were 350,790, all of which were treated as going to current subscribers. The 38,255 copies in blue wrappers were mailed as going to persons whose subscriptions had expired, to whom it had been the custom to send three copies a year in blue wrappers. The publisher first claimed to the inspectors and the postmaster that 144,930 copies mailed in manila wrappers as going to subscribers were on account of expired subscriptions; and you have substantially taken his figures as correct by conceding, on page 26 of your report, that he has the privilege of mailing on account of expired subscriptions a number approximately equal to that stated by him, to wit, 145,991. However, in a subsequent letter, dated November 20, 1905, the publisher admits that 140,000 of the 145,000 copies which he was permitted to mail on account of expired subscriptions for October, 1905, were mailed to persons other than subscribers, whose names were selected by the publisher himself and which were paid for out of a special fund that had been subscribed by his friends and sympathizers.

This practice of using names other than those of persons whose subscriptions had expired is testified to by Mr. Eylerman, one of the present employees of the publisher, who states that prior to the inspectors' count in October, 1905, the "lot numbers," or "sample-copy names," were used to pad the subscription list, and that this practice had been in operation since early in the year 1903; that the list of each publication was in this manner padded to the extent of about 125,000 every month.

It will be noticed here that on page 26 of your report the Woman's Farm Journal is shown to have had 153,597 current subscriptions for October, 1905, and to have mailed free 448,962 copies. Is not 448,962 copies a "considerable proportion," within the meaning of those terms as used in the case of *Conant v. The Postmaster General*, and if so, why should action not be taken in accordance with that decision?

This information and all the other material evidence herein given bearing on the alleged misstatements, etc., of this publisher are said to have been given your commission in full by the postmaster and the inspectors during their investigation at St. Louis. Under what construction of the law and regulations should the postmaster be instructed to return money collected for transient second-class postage on copies of the publication which were not even sent to persons who had been subscribers and whose terms had expired, but were sent to parties who had never subscribed, but whose subscriptions are claimed to have been paid for by others, which claim, however, the publisher has never substantiated within the knowledge of the postmaster or the inspectors? This question is pertinent for the reason that on December 19, 1906, when the postmaster at St. Louis submitted to you the question whether subscriptions to the Woman's National Daily, which had been paid for in large numbers by agents, were legitimate, you answered, under date of December 22, that "Persons are not subscribers to Woman's National Daily whose subscriptions are not paid for by themselves but by other persons competing in a subscription-gathering contest." If this rule is applicable to the Woman's National Daily, why is it not applicable to the Woman's Farm Journal and the Woman's Magazine?

You state on page 27 of your report in referring to the matter of expired subscriptions being carried from 14 to 16 months on this publication that "as stated before **we have no definite ruling as to the proportion or length of time expired subscriptions**

may be carried, and we are here in the same embarrassing situation in making a rule. If this case stood alone there would be no doubt as to the proper decision to make." You further state that you consider "the carrying of such a volume of expired subscriptions and for such a length of time, especially in such a low priced publication, as a grave abuse."

The mere fact that this case does not stand alone in your judgment must not influence your determination upon the question before you. If the circumstances are such as, in your view, constitute a grave abuse, and there is authority under the law to put an end to that abuse, your report should so state.

Comparing the number of expired subscriptions to the Woman's Farm Journal, treated by you as continuing subscriptions, with the number of such subscriptions to the Woman's Magazine treated in like manner, why was the proportion of expired subscriptions to current subscriptions conceded only to the extent of 34 per cent in the case of the Woman's Magazine, while the far greater proportion of 74 per cent was allowed in the case of the Woman's Farm Journal? Are we not forced to the conclusion that the publisher began the use of subscriptions which had expired over three months previously for the purpose of maintaining his mailings as to subscribers at the number claimed prior to the October count by the postmaster and the inspectors; and that he is claiming just such number each month as is necessary to meet the needs of each publication, in avoiding payment of transient second-class postage?

On page 26 of this memorandum it was pointed out that a total of 285,881 copies of the Woman's Magazine was claimed by the publisher to have been paid for and mailed from a special fund of \$10,000 provided by his friends and sympathizers. A total of 427,580 copies of the Woman's Farm Journal is also claimed by the publisher to have been mailed and paid for out of the same fund, at the price of one-half cent a copy. The same inquiry is made in respect of such copies of the Woman's Farm Journal as was made concerning those of the Woman's Magazine. Why should not postage at the transient rate have been collected on all these copies?

Your statement that there were 145,991 expired subscriptions in October 1905, of the Woman's Farm Journal is met with results of tests made by the postmaster and information given by the publisher, that seems to clearly disprove the mailing of any such number of copies that month to persons whose subscriptions had expired. There were 350,720 copies of that issue mailed as to actual subscribers. The postmaster at St. Louis sent 1,000 inquiries to postmasters at offices to which such copies were mailed, to ascertain whether the persons receiving them had ever subscribed for the publication. It was developed that 45 per cent of such persons were current subscribers, that 2.75 had been subscribers but their subscriptions had expired, and that 52.25 per cent had never subscribed, thus showing clearly that had the 144,930 copies mailed as going to subscribers in manila wrappers been addressed to those whose subscriptions had expired, as originally claimed by the publisher, and as is now stated by you, the percentage of expired subscriptions would have been 40 per cent, instead of 2.75 per cent. A second test based upon the 145,991 copies mailed in manila wrappers, which the publisher claimed to have been sent to persons whose subscriptions had expired, showed that 90 per cent of such persons had never subscribed.

Like tests, made by the postmaster for November, December, January, February, March, and April following, show that during the November mailing, which was after the count, the publisher grasped the expiration idea and his mailings of copies that month to persons whose subscriptions had expired increased from 2.75 per cent to 30 per cent and maintained practically that ratio thereafter, and that his mailings to nonsubscribers decreased from 52.25 per cent in October to 9 per cent in November, clearly indicating his change in policy after the count. In addition to this, the inspectors submitted to the publisher about November 15, 1905, names of 500 of the persons to whom 144,000 copies of the October issue had been mailed in manila wrappers and which the publisher claimed were going to persons whose subscriptions had expired. The inspectors called upon the publisher to submit the card records of such former subscriptions. He was able to furnish the inspectors but 6 cards out of the 500. He was called to the post office subsequently, and when shown the result of the tests and asked for a further statement he admitted that the 144,000 copies sent out in manila wrappers during October were not copies sent to persons whose subscriptions had expired, as originally claimed by him, and as you now contend, but were sent to parties whose names were selected by him and were paid for out of the special fund subscribed by others. This statement he reduces to writing in a letter on November 20, 1905, giving the number of copies alleged to have been mailed and paid for out of this special fund for the preceding months, a copy of which letter is before me. Inasmuch as the tests made showed that the persons to whom the publisher claimed to have sent these copies had never subscribed therefor, and as the publisher subsequently admitted that they were not former subscribers, why do you

in your report accept his original statement as true and credit him with 145,991 copies as having been mailed in October, 1905, to persons whose subscriptions had expired? In this connection it may be stated that all of the above information was given to Mr. Fettis, of your commission, by the inspectors, and should have reached you. If it did, upon what basis do you rule that the postmaster should return the postage collected on such illegitimate mailings?

I wish you to reconsider this case in the light of the inquiries and suggestions contained in this memorandum. You are not to determine whether it is politic or impolitic to rule upon this matter either the one way or the other. Your duty is merely to examine all the evidence before you and from whatever source derived, and determine whether under the law the action of the postmaster at St. Louis was proper and should be sustained, or was improper in whole or in part and should be reversed. You may have reason to believe that there are other publishers whose methods and practices are as bad as or worse than those of this publisher, but that fact certainly has no bearing upon the action which your duty demands you to take, as to those features of the case which should be considered without regard to the class to which it belongs.

It seems to me that in giving credence to the claims of the publisher you have entirely lost sight of the findings of the postmaster at St. Louis and the post-office inspectors. Certainly the investigations made and reports submitted by those officers are entitled to at least equal weight with the claims of a publisher who is under investigation. It should be remembered also that the original investigation by these officers was made at a time when the methods of the publisher were more nearly normal and when he was not contemplating investigation by the Post Office Department. It was calculated to put the publisher upon his guard, and it is possible that when your subsequent inquiry was made, however thorough and conscientious it may have been, he had adopted measures which effectively concealed past practices. Indeed, subsequent inquiries by the postmaster and inspectors seem to have developed this to have been true.

This is a case in which, among other things, the revenues of the Government are involved to the extent of \$80,000 between April, 1906, and the present date, and calls for the most careful action. The interests of the Government as well as the publisher should be thoroughly safeguarded, and no evidence in the possession of the department which will tend either directly or indirectly to throw light on the case should be ignored.

I desire nothing but a just and impartial report and will sustain you in making such a report, but I do not feel that, in the absence of a further statement from you in response to the questions raised in this memorandum I would be warranted in approving your action.

GEO. B. CORTELYOU,
Postmaster General.

HON. EDWIN C. MADDEN,
Third Assistant Postmaster General.

In the February 12 letter he said that he desired to have each case "dealt with" upon the "ascertained facts and without reference to any other consideration than whether the methods and practices pursued are not violative of law and there is not resting upon the Post Office Department the duty of excluding the publication from the second class."

The ascertained facts in the Lewis Publishing Co. case had been reported in the February 7 letter. If they were not the true facts and there were other facts found "which were violative of law," the February 12 letter left a way open for the department to do its "duty."

Under pressure of the Postmaster General's memorandum letter of February 13, the Third Assistant did review the case. On March 2, 1907, he, on request, sent a "preliminary" report to the Postmaster General. A compared copy of this is submitted herewith, marked "Exhibit No. 29."

EXHIBIT No. 29.

MARCH 2, 1907.

PRELIMINARY MEMORANDUM FOR THE POSTMASTER GENERAL.

Cases: The Woman's Magazine and The Woman's Farm Journal, St. Louis, Mo.

Gen. CORTELYOU:

The questions given me to decide in these cases were, first, whether or not there were excess mailings of the issues beginning with October, 1906, and ending with May, 1906, of The Woman's Magazine, and beginning with October, 1905, and ending with April, 1906, of The Woman's Farm Journal, and, second, whether or not the publications are entitled to continue in the second class.

The question of excess mailings is wholly a question of fact—a question of numbers and of totals—a mathematical problem. A publisher under the rules is entitled to mail one sample copy for each subscriber's copy.

As the issue was drawn in these cases it was necessary to make an actual count of the number of subscriptions of all classes upon the publisher's lists. That was done. We took only the evidence of last resort, namely, the written orders of the subscribers themselves. They are indisputable. It was found by the count that the number of current and expired subscriptions on the lists on the dates of mailing the issues in question was more than half of the total number of copies mailed. Therefore, there were no excess mailings, except the small excess in the October, 1905, mailing of The Woman's Farm Journal, as shown in the table on page 26 of my report and explained in note 2 on page 32.

The regulations require the marking of sample copies, but disregard of the regulations is a question by itself; it does not affect excess mailings. That is a question of numbers and totals.

The color of the wrapper, whether it be blue, manila, or white, has nothing to do with the question of excess mailings.

The publisher's practices prior to the date when the alleged excess mailings were said to have taken place have nothing to do with the case. It is a question of the number of subscriptions at the time of the mailings, not before or after that time.

The subscription lists of all publications are changing constantly. New names are being added and old ones are being cut off all the time in the course of business. A list of 100,000 one week might be a list of 150,000 the next, and a list of 150,000 one week might be only 50,000 the next.

This publisher, under the law, has the same rights as any other publisher. His conduct as a business man had nothing to do with the question of postage rates on the publication mailed by him. Therefore whether he advertised that he had 1,000,000 or 10,000,000 subscribers or whether he advertised that the copies sent in fulfillment of expired subscriptions were sent in blue wrappers or wrappers of any other color had nothing to do with the ultimate facts as to numbers and totals.

Practically all publishers carry expired subscriptions. We can not lawfully make a rule arbitrarily limiting the proportion of expired subscriptions which this publisher might carry or the length of time he might carry them. If he carries expired subscriptions in too great a proportion or for too long a time the remedy is to determine that the list as a whole is not legitimate and his publication therefore not entitled to second-class entry, because the law requires a "legitimate list of subscribers." If it were unlawful to carry expired subscriptions at all, or if the law limited the proportion to the whole list and the time they might be carried, or if a lawful regulation were in existence limiting the proportion and the time the expirations might be carried, it might then have been found, due to the great number of expired subscriptions and to the length of time they were carried in these cases, that there were excess mailings; but without such a law or regulation it would be unlawful to apply a rule of limitation in this individual case. To be lawful, such a rule must be applied to all alike. The question of whether the publication has a legitimate list of subscribers or is primarily designed for advertising purposes, or for free circulation, or for circulation at nominal rates has nothing to do with the question of excess mailings. That is a numerical problem—one of totals.

Respectfully submitted.

EDWIN C. MADDEN,
Third Assistant Postmaster General.

Mr. McCoy. You mean you reviewed your own decision?

Mr. MADDEN. Yes.

A full answer to the Postmaster General's 40-page letter was delivered to him later, on March 2. This response consists of 164 type-written pages. It discussed the entire question and contained a very complete record of the case from the beginning. A compared copy is submitted, marked "Exhibit No. 30."

EXHIBIT No. 30.

[Memorandum for the Postmaster General. Case: The Woman's Magazine and the Woman's Farm Journal, of St. Louis, Mo.]

RESPONSE TO INQUIRIES CONCERNING SECTION I OF THE REPORT OF THE THIRD ASSISTANT POSTMASTER GENERAL.

MARCH 2, 1907.

Gen. CORTELYOU:

The following is the response called for by your memorandum of February 13, 1907, on the case of the Woman's Magazine and the Woman's Farm Journal, of St. Louis, Mo., and grows out of the inquiries you propound to me concerning the decision which I rendered on the alleged excess mailings of those publications in response to your letter of instructions of April 14, 1906, which was quoted in my decision. It is perfectly patent that there is a misconception. To make the matter clear, I must here impress upon you with all the force and emphasis in my power, that in this case the question before this office was the question of the numerical excess of copies mailed by this publisher over the copies which he is legally entitled to mail at the pound rate, assuming that he has an unquestioned second-class privilege. The question of whether he is entitled to that privilege is a distinct question by itself and yet undecided. An adverse position upon this latter question of the second-class privilege (to be dealt with in section 2 of my report) would foreclose and put an end to any discussion as to the mailing of excess copies, because there is no such thing as excess mailings by a publisher who is not entitled to the second-class privilege at all. If this distinction, which is fundamental, is steadily borne in mind, most of the inquiries which are embodied in your memorandum resolve themselves away.

Upon the question of excess, the sole inquiry to be entered into is that of whether the copies actually mailed exceeded in number the persons properly carried by the publisher as subscribers, plus a number of sample copies equal thereto. In pursuing this inquiry the final test is one that was applied in this case, namely, that of determining by actual count the precise number of subscriptions of all recognized classes on the precise dates that the alleged excess mailings appear to have been made. This definite numerical inquiry is wholly distinct from the general continuing inquiry into the design for which the publications are conducted and whether they have legitimate lists of subscribers.

You will recall that after the receipt of your letter of April 14, 1906, I went to you and stated how I looked upon this case and how much it involved, and I then asked you, because of all the circumstances, that I be not required to take the case. You, however, insisted. Later on, when the Postal Commission was appointed to consider the whole second-class mail problem and it became apparent that I should have to devote my time largely to the work of preparing the department's case for that commission, and that I should have to devote other time to the public business growing out of the appointment of that commission, I again went to you and begged that you turn this case over to Assistant Attorney General Goodwin, or to some one else. You did not relieve me; hence, I was in duty bound to do the best I could with it. I, of course, treated it under the rules and practices of this bureau, except in the case of the examination and count of the subscription orders, etc., at the place of publication.

The real question is, first, whether I am right in holding that the question of excess mailings is a matter of totals, and whether in determining that question subscriptions which have expired may lawfully be carried for the period which I allowed them to be carried. There can be in the department no dispute as to the facts from which those inferences were drawn, because the facts were found by an impartial commission sent out for the purpose. If, therefore, there be any doubt in your mind as to whether I have drawn the correct inferences from those facts as a matter of law, then the whole question can easily be solved. I am informed, and I assume that my information is correct, that Mr. Lewis is under indictment in one of the St. Louis courts for fraudulently mailing the precise copies here said to be in excess. His guilt or innocence

depends upon the same facts which have been ascertained by the commission of this department. Submit to that court those facts and permit the court to draw the necessary inferences from them in deciding the question of his guilt or innocence. It is perfectly conceivable that the court may draw inferences different from those which I have drawn.

In order to get this matter clearly before you in the exact light which I conceived it to be before me, it is necessary to now place in this record copies of certain correspondence. It will show you the basis for some of my conclusions and that the questions which you propound in your memorandum are largely based upon a wrong hypothesis. I have often stated that this second-class reform is a delicate and difficult matter and one which is intensely irritating to all publishers, because all are affected; some, however, more vitally than others, and that the reform could hope to succeed only if it were sound in morals as well as in law; and that the law itself could not be the only guide. What was right to be done must have weight. We were not executing a new and untried statute. We were undertaking to stop wrongful practices which had grown up under lax methods for which administration is at fault, and which seemed to give those practices legal sanction. Therefore, those practices have not been regarded as immoral, much less criminal. Capital had been invested on the faith of that sanction, and we could not proceed harshly and inconsiderately of the equities of the situation. That was the spirit in which I recommended to you that Congress be asked at the last session to appoint a Postal Commission to look into the whole subject and find if it was not now due, in the interest of the Government and publishers, that we have a new and modern law. True it is that the statutes will stand much more in the way of construction and reform, but we were due in fairness, before going on, to try to get a new law rather than forge ahead heedless of the havoc which would be wrought.

I have all along been in the dark as to who was directing the work in this case. Your letter of April 14, 1906 placed upon me the duty of determining certain questions involved therein. I, of course, understood that they were to be handled according to the practices in the Bureau of the Third Assistant Postmaster General. I was to decide an appeal between the publisher on the one hand and the postmaster on the other.

Under date of November 11, 1905, the postmaster addressed the following letter to me. It sets forth his reasons for believing that the Woman's Magazine and the Woman's Farm Journal were abuses of the second-class privilege.

"I beg leave to state that the records of this office show as follows, relative to the issues of the Lewis Publishing Co., of this city, viz, the Woman's Magazine and the Woman's Farm Journal:

"First. That the Woman's Magazine is being mailed as second-class matter, on a waiver of third-class postage (made during the incumbency and on the recommendation of my predecessor) dated August 22, 1902, and that no regular second-class permit (as usually issued) has ever been granted the publishers.

"Second. That the Woman's Farm Journal was duly entered as second-class matter December 2, 1891.

"The department's reason for neither granting the usual permit for second-class privilege for the Woman's Magazine, or denying same, has never been communicated to me.

"If my silence in the matter is capable of being construed as a concurrence with the views of my predecessor, and is being at all depended upon as a reason for the continued nonaction of the department as above referred to, I am led to say that by reason of information recently acquired, I think it proper to express my conviction that not only the Woman's Magazine, but the Woman's Farm Journal as well, are both being mailed in abuse of the privileges to which second-class matter is entitled, and to an extent which justifies at least an immediate and searching investigation of the whole matter, if not an absolute denial of the second-class privileges to both publications.

"My conviction as above stated, is founded in part on reports to me made by my superintendent of mails, who had information that the October issue of the Woman's Farm Journal was mailed to regular subscribers in white wrappers, and the sample copies in manila wrappers.

"The weights of this mailing were as follows:

	Copies.
1. White wrappers (31,271 pounds, at 5 to pound).....	156, 355
2. Manila wrappers (28,986 pounds, at 5 to pound).....	144, 930
3. Blue wrappers, expirations (7,651 pounds, at 5 to pound).....	38, 255
4. Manila, as samples (60,568 pounds, at 5 to pound).....	302, 815

Total (128, 471 pounds)..... 642, 355

1056 EXPENDITURES IN THE POST OFFICE DEPARTMENT.

"Responses to inquiries by me made of postmasters at offices of addresses, included in the second item above stated (manila, 144,930 copies) not only sufficiently verify the information, given to my superintendent of mails (as mentioned), but also indicate that the copies in manila wrappers were systematically addressed to nonsubscribers, were not marked sample copies, and were apparently used to justify the mailing of the admittedly sample copies covered by fourth item in foregoing statement.

"I had hoped to confirm my convictions as related to the October issue by a similar test of the November issue, but find my efforts were thwarted by the fact that the manner of wrapping (in different colored wrappers) has been changed, and the entire November issue is in manila wrappers of one color.

"This mailing, just completed, has been made as follows:

	Copies.
For subscribers (65,034 pounds; 5 weigh 18 ounces).....	333, 300
For sample copies (60,178 pounds; 5 weigh 18 ounces).....	306, 412
Total (125,212 pounds).....	641, 712

"From which it will be seen that the total November issue is about the same as that for October, the assumption being warranted that the copies for regular subscribers, which in October were in white wrappers, are now in manila wrappers, and that the copies represented by October item number 2 (28,986 pounds, 144,930 copies), then mailed as for regular subscribers, are again so mailed in November and used as part of the quantity to justify the sample copy mailing.

"There is but one conclusion to be drawn from the sudden change in the wrapping of the November issue, viz, that it was an effort to prevent, or interfere with, an investigation of real conditions:

"While like inquiries can and will be made by me of postmasters touching the legitimacy of the November issue, yet, because of the altered style of mailing, it will make an arrival at true conditions more difficult, but my opinion is that it presents a reason for immediate and decisive action on the part of the department to compel the publishers to submit to an investigation, rather than to allow them to further thwart one.

"My belief is that a fair showing of the lost revenue on the November mailing of the Woman's Farm Journal is found in the following pro forma bill, based on the white and blue wrappers mailed in October:

	Pounds.	
Due on copies of legitimate mailings.....	31, 271	
(See October white wrappers.)		
Due on copies of legitimate expirations.....	7, 651	
(See October blue wrappers.)		
Total legitimate mailings.....	38, 922	
Due on sample copies, one for each legitimate subscriber.....	38, 922	
Total.....	77, 844	at 1 cent.. \$778. 44
Due on balance of November mailing.....	125, 212	
Less above mentioned.....	77, 844	
Net.....	47, 368	
At 5 copies weighing 18 ounces (242,761 copies at 1 cent).....		2, 427. 61
Total due on November mailing.....		3, 206. 05
Amount paid on November mailing.....		1, 252. 13
Leaves difference of (loss to Government).....		1, 953. 93

"From what slight investigation I have been able to make of the mailings of the Woman's Magazine, indications are that similar conditions exist as affecting that magazine, and in my opinion a thorough investigation will show a pro rata loss to the Government on that publication.

"For the reasons above stated and because I deem it my duty to no longer remain silent in this matter, I have made this report, and ask for instructions as to further action prior to the next mailings of these publications.

"The inspectors have made various inquiries of me, touching the case, from which I assume that additional facts can be obtained by inquiry made to the honorable chief inspector.

"The Woman's Magazine begins its mailing on the 20th of each month, and the Woman's Farm Journal about the 1st of each month, and early instructions will be necessary to prevent further loss to the Government in connection with the mailings of the next issues.

"Very respectfully,

"FRANK WYMAN, *Postmaster.*"

The foregoing letter was referred to you on November 23, 1905, with the following memorandum:

"I have the honor to hand you herewith a letter from the postmaster at St. Louis, dated November 11, on the cases of the Woman's Magazine and the Woman's Farm Journal, published in that city.

"It appears that the postmaster has instituted—apparently on his own motion—an investigation with regard to these two publications, and on the result he ventures the opinion that both are abuses of the second-class mailing privilege.

"My views with regard to the status of these publications have already been made known to you in several other memoranda. In reply you directed that the two cases should take their course in the class to which they belong; and that accords with my own view as to what is best to be done.

"As a part of his procedure the postmaster has caused inquiries to be made by other postmasters to ascertain whether or not persons to whom copies of the publications have been mailed are subscribers in fact. This is the only instance of record where a postmaster has taken such action. A copy of the postmaster's form of inquiry is attached.

"I do not consider it best for me to take any action of this letter from the postmaster until you have seen it and determined what, under the unusual circumstances, should be done with regard to it. Please direct me.

"Respectfully,

"EDWIN C. MADDEN,

"*Third Assistant Postmaster General.*"

You did not give me any instructions in response to that memorandum.

On March 15, 1906, the postmaster wrote me the following letter:

"On November 11 last I advised you by letter fully of the alleged abuse of second-class privileges by the Woman's Farm Journal and the Woman's Magazine, publications of the Lewis Publishing Co., of this city, requesting instructions as to what action I should take prior to the next mailing of these publications to prevent further loss to the Government in connection with their mailings. I have received no response to this letter.

"In the meantime there are being held under instructions of the post-office inspectors and United States attorney of this district, 65,851 pounds of the October issue of the Woman's Farm Journal, mailed October 5 to 11, inclusive, 1905, aggregating about 300,727 copies.

"Later, about December 1, E. G. Lewis and other officers of the Lewis Publishing Co. were indicted and charged with conspiracy to defraud the United States out of large sums of money, and, in pursuance of said conspiracy, with mailing, during October, 1905, 300,727 copies of the October issue of the Woman's Farm Journal, aggregating in weight 65,784 pounds, in excess of the number of copies and pounds which they were legally entitled to transmit through the mails at the rate of 1 cent a pound.

"They are also charged with the mailing, in pursuance of said conspiracy, during the same month, of issues of the Woman's Magazine for November, 1905, 539,308 copies of said publication, aggregating in weight 107,682 pounds, in excess of the number of copies and pounds which they were legally entitled to transmit through the mails at the rate of 1 cent per pound.

"I reported this matter to you under instructions in section 456, Postal Laws of 1902, paragraph 6, with the desire of being instructed as to the treatment of and the postage that should be collected on future mailings of these publications. It has now become important that I be promptly advised as to what postage should be required on the copies of the publications being held in this office, mailed in excess of the number the publishers were legally entitled to mail at the rate of 1 cent per pound, assuming, as a basis of your instructions, that the number charged was mailed in excess of legitimate mailings."

The foregoing communication was transmitted to you on March 17, 1906, with the following letter:

"I have the honor to hand you herewith a letter just received from the postmaster at St. Louis, Mo. It relates to the Woman's Farm Journal and the Woman's Magazine, of that city, and complains that a former letter, dated November 11 last, has not been replied to.

"Owing to the unusual circumstances and the fact that the case of these publications did not originate with and is not being treated by the Third Assistant Post-

master General, I referred the letter of November 11 to you with a request for instructions. You issued none.

"In the letter submitted herewith, dated March 15, the postmaster calls attention to the November 11 letter, and states that he is still holding the 65,851 pounds of the October issue of the Woman's Farm Journal.

"For the same reasons stated in connection with the reference of the first letter, I shall take no action upon this letter of March 15 until I receive instructions from you; but I deem it proper to invite your attention specially to the last paragraph, from which it might be inferred that specific instructions were issued by this office. Such is not the fact. None were issued. The postmaster appears to be acting under instructions in the Postal Laws and Regulations (sec. 456, especially par. 6) and such others as may have been issued to him by other officers."

Under date of March 19, 1906, the chief post-office inspector, by indorsement, as follows:

"Respectfully referred to Third Assistant Postmaster General (Classification Division) with request that proper action be taken.

"E. G. Lewis Publishing Co., St. Louis, Mo.: Transmitting communication from the inspector in charge at St. Louis, Mo., in which he requests that the postmaster at St. Louis, Mo., be instructed that the legal rate chargeable on publications mailed in excess of the number to which the publishers are entitled is 1 cent per copy (or each 4 ounces) when sent to a single address, etc."

transmitted to me the letter therein referred to, dated March 15, 1906, which is as follows:

"In the indictment against Lewis for conspiracy to defraud the United States it is charged that, in pursuance of a conspiracy, he and others mailed during the month of October 300,727 copies of the October issue of the Woman's Farm Journal, aggregating in weight 65,784 pounds, in excess of the number of copies and pounds which the publishers were legally entitled to transmit through said mails at the rate of 1 cent per pound. It is further charged that during the same month they deposited 539,308 copies of the November issue of the Woman's Magazine, aggregating in weight 107,682 pounds, in excess of the number of copies and pounds which they were legally entitled to transmit through the said mails at the rate of 1 cent per pound, the offense charged being conspiracy to defraud the Government out of the difference in postage on the excess mailings between 1 cent per pound and 1 cent per copy (5 to the pound), or for each 4 ounces, when sent to a single address.

"It is necessary in the prosecution of the case to show that the postage on these excess mailings required by the department to be paid (assuming we prove a mailing in excess of the number to which the publishers are entitled) is 1 cent per copy, or for each 4 ounces, when sent to a single address.

"In the preparation for trial by Inspectors Sullivan, Stice, and Reid, involving a careful examination of the postal laws on this point, it develops that there is an apparent failure to specify the exact course to be pursued by postmaster in the way of collection of postage on abuse such as the one now in court. Paragraph 5 of section 456, Postal Laws, states in substance that the postage of 1 cent for each 4 ounces is required on extra copies sent by the publisher when acting for an advertiser or purchaser, or where he issues a large edition containing an article intended to advance private interests, or where advertisements were secured under an agreement to distribute a given number of copies in excess of number of subscribers. It has apparently been left to paragraph 6 to deal with such cases as the one now at court, where a publisher is mailing as sample copies a larger number than actually subscribed for in order to maintain a given circulation, and in continuously mailing them in excess of 100 per cent of the number issued to regular subscribers, and this paragraph provides that copies shall be detained until the facts as to whether the publication is primarily designed for advertising or free circulation are ascertained, and the postmaster is instructed to promptly report the case to the Third Assistant Postmaster General. There is an absolute silence as to what postage is chargeable on these excess mailings described in paragraph 6. Postmaster did report these facts November 11, 1906, to the Third Assistant Postmaster General, but received no reply.

"As you know, under the suggestion of the United States attorney and the directions of this office, the postmaster here is holding as evidence 65,851 pounds of sample copies of the October issue of the Woman's Farm Journal, mailed in excess of those actually subscribed for in order to maintain a given circulation, a portion of which publications being held are so marked 'sample copies.' The item consists of 38,865 pounds marked 'sample copies' and 28,986 pounds sample copies not so marked. The legitimate mailings of that issue, including one sample copy for each legitimate subscriber, was 61,831 pounds. The copies being held were mailed in excess of the number of legitimate subscribers, including sample copies, last given.

"What the attorney will need as evidence through the postmaster will be the postmaster's testimony to the effect that the legal rate chargeable on these publications mailed in excess of the number to which the publishers were entitled is 1 cent per copy (or for each 4 ounces) when sent to a single address. The postal laws being silent on that direct proposition, it is necessary that he be instructed by the proper officer of the department either to that effect directly or to the effect that the same postage is applicable as is required under paragraph 5 of section 456, Postal Laws, which refers to abuses of similar character. I have requested the postmaster to this day make this inquiry direct to the Third Assistant Postmaster General, and it is desired that you take the matter up with the proper officer that such instructions may be given the postmaster as is necessary to enable him to properly act and testify of a matter not made clear by the existing regulations."

In accordance with my previous action, this communication was referred to you on March 22, 1906, with the following memorandum:

"For reasons given in previous memoranda, all correspondence in relation to the cases of the Woman's Farm Journal and Woman's Magazine, of St. Louis, which reached this office have been submitted to you with the request that, if you wished me to take any action, you would so direct. This has been due to the fact that the cases have not arisen nor have they been handled by this bureau, and I felt it important not to complicate or confuse the action of another officer in regard to the cases by any action of mine. In response to none of these memoranda and letters referred have you given me any instructions."

"I am now in receipt of a letter from the inspector in charge at St. Louis, referred to me by the chief post-office inspector, asking that the postmaster at St. Louis be instructed by me in regard to the rate of postage on certain copies of the Woman's Farm Journal now detained in the St. Louis post office."

"In order that you may be advised fully of my action, I hand you herewith a copy of the letter and reference and a copy of my reply addressed to the chief post-office inspector. In this connection I beg to draw your attention to my memoranda of November 23, 1905, and March 17, 1906."

"If you desire that I issue any instructions direct to the postmaster, please inform me."

The following is my reply to the chief post-office inspector, dated March 22, 1906:

"Your communication of the 19th instant, transmitting one from R. M. Fulton, inspector in charge at St. Louis, Mo., in regard to the Woman's Magazine and the Woman's Farm Journal, is received."

"Inspector Fulton states that the postmaster at St. Louis reported to this office under date of November 11, 1905, certain excessive mailings of the publications in question and asked to be instructed in the matter, and that the postmaster under date of March 15 called attention to the letter of November 11 and renewed his request for instructions. The inspector further states that it will be necessary to submit as evidence in the prosecution of certain court cases of the Lewis Publishing Co. a statement showing the legal rate of postage chargeable on excessive mailings of a publication admitted as second-class matter."

"No reply was sent to the postmaster at St. Louis in response to his letter of November 11. Owing to the unusual circumstances of the case, the letter was submitted to the Postmaster General, and his instructions were asked before any action should be taken by this office. The Postmaster General gave no instructions. The letter of the postmaster dated March 15 has, for the same reasons, also been submitted to the Postmaster General, and this office is awaiting his instructions before proceeding."

"Regarding the rate of postage chargeable on excessive mailings of sample copies of a publication admitted as second-class matter, you are informed that the rule of the department is laid down in paragraph 12 of Circular III, appearing on pages 1040-1041 of the January, 1905, Postal Guide, which reads as follows:

"12. If sample copies in excess of the number hereinbefore specified (see par. 10) be presented for mailing, they are not entitled to the pound rate of postage. They are chargeable with the transient second-class rate of 1 cent for each 4 ounces or fraction thereof, to be prepaid with stamps affixed, on each separately addressed copy or package of unaddressed copies."

"The foregoing rule is grounded upon the theory that when a publisher purports to send more sample copies than he is entitled to as publisher, he ceases to send them as such publisher and they cease to be sample copies and are subject to the provision of law establishing the rate on newspapers and periodical publications of the second class when sent by other than the publisher or news agent. (Act of June 9, 1884, ch. 73, 1 Supp., R. S., 438; sec. 455, Postal Laws and Regulations. See also sec. 448, Postal Laws and Regulations.) This rule charging the transient second-class rate upon excess sample copies is applied in cases where prima facie such excess mailing is not

sufficient of itself to indicate that the publication should be excluded from the second-class rate by reason of its being 'designed primarily for advertising purposes, or for free circulation, or for circulation at nominal rates.' Where the mailing of such sample copies is, however, sufficient to justify that inference, the practice is not to make any different charge for the excess sample copies but to determine that the publication itself is not entitled to the second-class rates at all, and that all copies in consequence must be charged the third-class rate. Whether the excess sample copies in the case in question, therefore, are chargeable at the pound rate, at the transient second-class rate, or at the third-class rate depends upon the solution of the following matters of fact:

"First. Whether such copies are in fact in excess of 100 per cent of the copies actually circulated as to subscribers within the regulations of the department. If not in excess of 100 per cent they are chargeable at the pound rate; if in excess they are chargeable at the transient second-class rate or the third-class rate dependent upon the answer to the second question.

"Second. Whether or not such excess sample copies are, either standing alone or in combination with other relevant facts, sufficient to indicate that the publication is 'designed primarily for advertising purposes, or for free circulation, or for circulation at nominal rates.' If the facts in the possession of the postmaster are sufficient to justify the conclusion that these copies are in fact in excess of 100 per cent of the copies which the publisher is entitled to send as to subscribers, then it is the duty of the postmaster to charge upon such excess the transient second-class rate. The facts necessary for this conclusion are not before this office, and no decision thereon has been made.

"Third. If in addition to finding that the copies are in fact excess copies it is also found that such excess copies are sufficiently numerous, in the judgment of the postmaster to justify the inference that the paper is 'designed primarily for advertising purposes, or for free circulation, or for circulation at nominal rates,' then those facts should be laid before the department in order that a hearing upon them, required under the act of March 3, 1901 (ch. 851, 31 Stat. L., 1107; sec. 444. Postal Laws and Regulations), may be had for the determination of the fundamental question whether the publication itself is entitled to the second-class mailing privileges at all.

"While the postmaster may not deny the second-class mailing privilege to a publication except upon a determination to that effect by the department after a hearing, it is his duty, assuming the right to that privilege, to charge the lawful rate upon every copy passing through his hands. Therefore, if the postmaster has before him facts which, in his judgment, justify his determining these copies to be subject to the transient second-class rate he should notify the publisher of that fact and demand that such rate be paid before transmission.

"Both letters of the postmaster (that of Nov. 11, 1905, and that of Mar. 15, 1906) having been, as heretofore stated, submitted to the Postmaster General and his instructions asked, it is not deemed advisable for this office to instruct the postmaster in advance of receiving the Postmaster General's directions."

You will note that up to this date, as my memorandum of March 22 states, I had received no instructions from you, and I felt it my duty to answer the post-office inspector in charge through the chief post-office inspector. On March 22, 1906, you issued to me the first instructions in the case in the following letter:

"The letter addressed to you by the postmaster at St. Louis, Mo., under date of March 15, to which was attached your communication to me of March 17, is herewith returned.

"You will please inform the postmaster at St. Louis, in response to his inquiry, of the amount of postage which should be collected on copies of the Woman's Magazine and the Woman's Farm Journal, now withheld from transmission by him as being in excess of the number of copies which the publishers are legally entitled to transmit at the second-class rate of postage, assuming as the basis of your instruction to the postmaster that the number of copies of each publication charged by him as having been mailed in excess of that authorized by law is correct.

"It is requested that your letter of instructions to the postmaster at St. Louis be submitted to me before transmission."

In response to the foregoing letter I prepared instructions to the postmaster. In compliance with your direction I submitted my letter of instructions to you for approval before transmission. It was as follows:

"Your letter of March 15, in which you call attention to a letter dated November 11, 1905, to which you received no answer, is received.

"You are informed that your letter of November 11 was referred to the Postmaster General for his consideration. No action was, therefore, taken by this office.

"In response to the inquiry, contained in your letter of March 15, respecting the postage which should be collected on 300,727 copies of the October, 1905, issue of the

Woman's Farm Journal, aggregating in weight 65,784 pounds, withheld from transmission by you as being in excess of the number of copies which the publishers are legally entitled to transmit at the pound rate of postage, and 539,308 copies of the November, 1905, issue of the Woman's Magazine, aggregating in weight 107,682 pounds, stated to be in like manner in excess of the number of copies which the publishers are entitled to transmit at the pound rate, you are informed as follows:

"Assuming, as matter of fact, that the copies withheld from transmission in the one case and mailed in excess in the other, are copies in excess of the number which the publishers are entitled to mail at the pound rate of postage, as stated in your letter, then, unless such excess is great enough to establish that the publication is 'designed primarily for advertising purposes, or for free circulation, or for circulation at nominal rates' and thus exclude the publication from the second class altogether, a matter which can be determined only after a hearing before this bureau under the act of March 3, 1901 (ch. 851, 31 Stat. L., 1107; sec. 444, Postal Laws and Regulations), such excess copies are chargeable at the rate of 1 cent for each 4 ounces or fraction thereof, prepaid by stamps affixed."

You returned that letter to me with instructions to eliminate from the last paragraph the following:

"Unless such excess is great enough to establish that the publication is 'designed primarily for advertising purposes, or for free circulation, or for circulation at nominal rates' and thus exclude the publication from the second class altogether, a matter which can be determined only after a hearing before this bureau under the act of March 3, 1901 (ch. 851, 31 Stat. L., 1107; sec. 444, Postal Laws and Regulations)."

The letter issued by me to the postmaster under date of March 30, 1906, therefore read as follows:

"Your letter of March 15, in which you call attention to a letter dated November 11, 1905, to which you received no answer, is received.

"You are informed that your letter of November 11 was referred to the Postmaster General for his consideration. No action was, therefore, taken by this office.

"In response to the inquiry, contained in your letter of March 15, respecting the postage which should be collected on 300,727 copies of the October, 1905, issue of the Woman's Farm Journal, aggregating in weight 65,784 pounds, withheld from transmission by you as being in excess of the number of copies which the publishers are legally entitled to transmit at the pound rate of postage, and 539,308 copies of the November, 1905, issue of the Woman's Magazine, aggregating in weight 107,682 pounds, stated to be in like manner in excess of the number of copies which the publishers are entitled to transmit at the pound rate, you are informed as follows:

"Assuming, as matter of fact, that the copies withheld from transmission in the one case and mailed in excess in the other are copies in excess of the number which the publishers are entitled to mail at the pound rate of postage, as stated in your letter, then such excess copies are chargeable at the rate of 1 cent for each 4 ounces or fraction thereof, prepaid by stamps affixed."

It appears that the elimination of the words above quoted was due to the opinion given you by Assistant Attorney General Goodwin under date of March 28, 1906.

Under date of April 2, 1906, the postmaster addressed the following letter to the Third Assistant Postmaster General, he apparently having found my letter of instructions insufficient to meet the situation:

"I have your letter of March 30, in response to my inquiry of March 15, bearing on the matter of postage that should be collected on excess copies of the Woman's Farm Journal and Woman's Magazine mailed in October last, by the Lewis Publishing Co.

"The last paragraph of your letter reads:

"Assuming, as matter of fact, that the copies withheld from transmission in the one case and mailed in excess in the other are copies in excess of the number which the publishers are entitled to mail at the pound rate of postage, as stated in your letter, then such excess copies are chargeable at the rate of 1 cent for each 4 ounces or fraction thereof, prepaid by stamps affixed."

"As the above instructions appear to relate solely to the October mailing, I again write you for instructions as to how to proceed in connection with future mailings of the magazine and Farm Journal, assuming that the same conditions exist as to the mailings of a large number of copies of each publication in excess of the legitimate mailings.

"My attention was directed on March 28, in a joint conference with the United States attorney and the post-office inspectors, to a letter from you addressed to Chief Inspector Vickery, date of March 22, 1906, in which you stated among other things:

"While the postmaster may not deny the second-class mailing privilege to a publication except upon a determination to that effect by the department after a hearing, it is his duty, assuming the right to that privilege, to charge the lawful rate upon every copy passing through his hands. Therefore, if the postmaster has before him

facts which, in his judgment, justify his determining these copies to be subject to the transient second-class rate, he should notify the publisher of that fact and demand that such rate be paid before transmission.'

"The conclusion was reached in this conference that it was my duty, under the instructions embraced in the above paragraph, to notify the Lewis Publishing Co. of my intentions to demand the 1 cent for each 4 ounces postage on excess mailings of the future issues of its publications, and I would consider it my duty to do so had these instructions been addressed to me.

"The next issue of the Farm Journal will begin mailing within a few days, and the mailing of the magazine will begin about the 20th instant. Without waiving my views as expressed in a letter to your office November 11, to the effect that I challenged the right of these publications to further second-class privileges, I would state that it is my desire in the meantime, while this question is being settled, to protect the revenues of the Government as far as possible by collecting from the publishing company the proper transient second-class postage for excess mailings of their papers.

"At an early date I would be pleased to receive such orders from you in this respect as will bring about this result, and I will act upon them, as I am satisfied that in the future mailings of these publications the same attempt to defraud the revenues of the Government will be made, and in the same manner, as was practiced by them last October and has been regularly since that date."

Responding to this letter, instructions dated April 6, 1906, were sent to the postmaster from this office, not, however, until they had been submitted to you for approval, with a memorandum dated April 4, 1906. You returned the letter and the memorandum marked "O. K., G. B. C." The letter read:

"In answer to your letter of April 2, on the subject of the Woman's Farm Journal and Woman's Magazine, published by the Lewis Publishing Co., you are informed that the direction that copies found to be in excess of those which the publishers are entitled to mail at the pound rate of postage are chargeable at the rate of 1 cent for each 4 ounces or fraction thereof, prepaid by stamps affixed, applies obviously to all excess mailings, whether they be of the issue of October or any other month. The inquiry made by you was as to a particular number of copies of particular issues, and it was answered accordingly. Inasmuch, however, as it is the duty of the postmaster to charge the lawful rate upon all mail matter passing through his hands, it would be your duty, whenever the facts before you justify you in holding that the copies are in fact excess copies, to charge upon such excess the rate I have already mentioned, namely, the transient second-class rate.

"With respect to your statement that you challenge the right of these publications to further second-class privileges, you are informed that you should set out in a report all the facts upon which your challenge is based in order that proper action may be had by this office, under the act of March 3, 1901.

"It is a part of the postmaster's duty to lay before this office any facts within his knowledge which tend to show that any publication mailed at his office is not entitled to the second-class mailing privilege. Such report should be detailed and should be accompanied by a statement of the evidence by which it may be supported in case a hearing may be decided upon."

Merely as indicating the regularity with which I submitted to you everything concerning the Lewis case which came to my notice, or which called for any action on my part, prior to April 14, 1906, when the case was turned over to me, I quote the following memorandum sent you April 13, 1906, which was returned to me marked "O. K., G. B. C.:"

"In accordance with my practice of bringing all matters in relation to the Lewis publications of St. Louis to your attention, I beg to hand you herewith a letter from Mr. Shepard Barclay, of St. Louis, making inquiry in regard to the Postal Laws and Regulations, Edition of 1902, and other matters, and also my reply thereto. If the reply meets with your approval I will forward it."

My reply to Mr. Barclay, referred to in the foregoing memorandum, and which was sent under date of April 17, 1906, read:

"In reply to your letter of the 9th instant I have to say that the 1902 edition of the Postal Laws and Regulations is the latest. There is no prescribed form or manner of appealing from a ruling of a local postmaster on the postage charges exacted by him. Postmaster Wyman at St. Louis is probably acting under the instructions from this office found on page 1041 (par. 12) of the January, 1905, Postal Guide, as follows:

"If sample copies, in excess of the number hereinbefore specified (see par. 10), be presented for mailing, they are not entitled to the pound rate of postage. They are chargeable with the transient second-class rate of 1 cent for each 4 ounces or fraction thereof, to be prepaid with stamps affixed, on each separately addressed copy or package of unaddressed copies."

"Paragraph 10, referred to, provides that the number of sample copies which may be mailed at the pound rate with any issue of a publication must not exceed the number of copies of that issue sent to subscribers."

Under date of April 11, 1906, the postmaster addressed the following letter to the Third Assistant Postmaster General:

"Referring to your letter of the 6th instant, in which you state, among other things, that it is my duty, when satisfied copies of a publication are being mailed in excess of the regular number to which it is entitled at the pound rate, to collect the transient second-class postage on such excess, I will state that on the 6th instant, upon receipt of a like ruling from the Postmaster General, I notified the Lewis Publishing Co. that the transient second-class rate of postage would be required thereafter on all copies of the Woman's Farm Journal mailed in excess of their legitimate subscriptions, numbering 141,328, together with sample copies not to exceed that number, or a total mailed of 282,656. (See copy of letter herewith.)

"On the 7th instant E. G. Lewis, president of this company, called at my office and stated it was his intention to appeal from my decision as to the number of his legitimate subscribers, and deposited with me \$3,000 to cover postage at the rate of 1 cent per copy on the anticipated mailings of 300,000 excess copies of the said journal. (Copy of Mr. Lewis's letter and of receipt given him herewith attached.)

"The mailing of the excess copies of the Farm Journal was then begun, and has practically been completed. The mailing of the 282,656 had practically been completed at the time my notice was given.

"Some five days have passed and Mr. Lewis has not submitted to me his papers bearing on the appeal, and it is deemed wise not to defer reporting the matter to you longer, and requesting that should Mr. Lewis forward his appeal and papers bearing thereon direct to you that you return same to this office, that I may be able to make an intelligent report and recommendation on the defense submitted by him.

"In the absence of these papers, I might state briefly for your information, in the meantime, that on November 11, 1905, I submitted quite a lengthy report to you in which I stated, among other things:

"That by reason of information recently acquired I think it proper to express my conviction that not only the Woman's Magazine, but the Woman's Farm Journal as well, are both being mailed in abuse of the privileges to which second-class matter is entitled, and to the extent which justifies at least an immediate and searching investigation of the whole matter, if not an absolute denial of the second-class privileges to both publications."

"I stated further my belief was that a fair showing of the lost revenue on the November, 1905, mailing of the Woman's Farm Journal amounted to about \$1,953.93, and that while because of a change of system of mailing effected by Lewis to thwart, if possible, a like investigation of the Woman's Magazine, it was impossible to tell the exact loss of revenues in connection with that magazine; yet that, from what investigation I had made, the indications were similar conditions existed as affecting the said Woman's Magazine, and that a thorough investigation would show a pro rata loss to the Government on that publication. I gave the figures and some facts upon which my conclusion was reached, and further stated that 'the inspectors have made various inquiries of me touching the case, from which I assume that additional facts can be obtained by inquiry made to the honorable chief inspector.' I stated that these publications would begin their next mailing at an early date, and asked for instructions as to further action prior to such mailing to prevent additional loss to the Government. Neither instructions nor reply were received from you on this matter until your letter of the 6th instant, which was received by me on the 9th.

"I now report that the continued investigations, as made since November 11, by this office and the inspectors, fully confirm my belief and conviction as then expressed, and I doubt not that the particulars of this investigation fully reported to the chief inspector by the inspectors handling the case can be made (or are) available for your information.

"I intend to submit a notice to the Lewis Publishing Co. to-morrow, affecting the mailings of the excess copies of the Woman's Magazine, similar in terms to the one submitted on the 6th inst. affecting the Farm Journal.

"The number of 141,328, as representing the legitimate subscriptions to the Woman's Farm Journal, and the number 539,901, as representing the legitimate subscriptions to the Woman's Magazine, are based on a count made of the current subscription card records of these publications as kept and submitted by Mr. Lewis, president of the company, which count was made by inspectors in conjunction with 54 trusted and experienced clerks from my office. The accuracy of this count has been confirmed by replies to inquiries made since by clerks in my office, who, from the monthly mailings of each publication, sent since October, 1905, have selected a representative

list of names and addresses from the mailings thereof upon which to base these inquiries, and to thoroughly and fairly test the legitimacy of the list.

"That the legitimate list of subscribers reaches even the numbers above indicated is challenged, as recent developments show practically a thousand subscriptions obtained in one instance at the rate of 5 cents per annum, through names furnished by an advertiser interested in the circulation of the publications for advertising purposes. This is representative of other like cases brought to our attention. Another illustrative case shows over 1,500 subscriptions obtained since January 1, 1906, by so-called clubbing arrangements with another newspaper, by which the Woman's Magazine is practically being sent gratis as a premium, the nominal rate of 5 cents per annum being charged.

"This office is confident that it has facts and evidence to enable it to maintain its position fully against any showing that the Lewis Publishing Co. may submit in connection with their appeal to your office. Further report will be submitted along the lines made necessary as soon as the claims of this company are received by me."

The foregoing letter was submitted to you on April 14, 1906, with the following memorandum:

"I hand you herewith a letter from the postmaster at St. Louis, under date of April 11, 1906, inclosing a copy of his letter of April 6 to the Lewis Publishing Co., a copy of their reply, and a receipt given them for deposit; also a letter of the postmaster at St. Louis under date of April 12, inclosing a copy of his letter of April 12 to the Lewis Publishing Co., and his supplemental letter of April 12. All of these were received to-day.

"Inasmuch as these relate to the St. Louis case, all communications upon which I have heretofore sent you, I send these also for fear that any action of mine might complicate action contemplated elsewhere.

"On April 6, 1906, I wrote the postmaster informing him that copies in excess of those which the publishers are entitled to mail at the pound rate are chargeable at the second-class transient rate, and that it is his duty to charge the lawful rate upon all matter passing through his hands, and that if the facts justify the conclusion that copies were being mailed in excess of the publisher's privilege for his legitimate list of subscribers and an equal number of sample copies, he should charge upon such excess the transient second-class rate of postage. The theory upon which the transient second-class rate is charged was explained in my letter of March 22, 1906, to the chief post-office inspector, and, although that theory has never received judicial approval and may be regarded as doubtful, I deemed it best to adhere to it in instruction to the postmaster.

"It appears from this correspondence that, acting under these instructions, the postmaster has notified the publishers that, having reached the conclusion that the legitimate subscriptions to the Woman's Farm Journal are not to exceed 141,328 and the legitimate subscriptions to the Woman's Magazine are not to exceed 539,901, that all copies in excess of 282,636 in the first case and in excess of 1,079,802 in the second case would be chargeable at the transient second-class rate.

"From this ruling the postmaster informs me that the publishers have appealed, but that appeal has not yet been received in this office. Pending such appeal and until the facts may be determined by the department, the ruling of the postmaster upon the evidence before him stands. There is, therefore, nothing at the present moment upon which this bureau can act."

On the same date, April 14, 1906, you wrote me the instructions which for the first time placed the matter in my charge. Your letter is as follows:

"The letter of E. G. Lewis and the accompanying statement of the Lewis Publishing Co., both of which are dated April 7 and inclosed herewith, have been transmitted to the Post Office Department by Hon. Jesse Overstreet, Member of Congress, to whom they are addressed.

"It will be seen that in his letter Mr. Lewis complains that the postmaster at St. Louis has required the Lewis Publishing Co. to deposit with him an amount sufficient to cover the postage on copies of its publication entitled Woman's Farm Journal, which he believes to have been mailed in excess of the number legally mailable at the pound rate, and as president of that company, asks to be accorded a hearing upon the issue raised by the action of the postmaster.

"You will please immediately institute an investigation for the purpose of determining whether the Woman's Farm Journal and the Woman's Magazine, issued by the Lewis Publishing Co., are entitled to second-class privileges, and if so, what number of copies of each publication should be admitted to the mails monthly at the rate of 1 cent per pound. This investigation should be thorough and comprehensive, and in pursuance of it the company should be afforded early opportunity to be fully heard upon the questions involved."

On April 17, 1906, you returned to me my memorandum of April 14, together with the letter of the postmaster dated April 11 to which it referred, with the following memorandum:

"This would appear to be covered by my letter to you of the 14th instant, directing an investigation of the Lewis publications, in response to Mr. Lewis's appeal through Representative Overstreet."

From April 14, 1906, therefore, the case was in the hands of the Third Assistant Postmaster General for the purpose of deciding the questions at issue between the postmaster and the publisher. I proceeded to deal with it according to the practices of this bureau in dealing with other publications in like situations, which I believed to be according to your instructions, except that as the issue was drawn on the appeal, which I was to decide, it was necessary to undertake such an investigation of the publisher's business, records, etc., as had never before been undertaken by the Third Assistant Postmaster General.

It will be plain from the foregoing that prior to April 14, 1906, I was under the exceeding embarrassment of being unable to inform the postmaster, in response to his repeated letters, as to the course to pursue, except in the two instances where letters of instructions were sent him by your direction. They are my letters of March 30, 1906, and April 6, 1906.

The case now being in my charge, I, on April 19, 1906, wrote the chief post-office inspector, the postmaster at St. Louis, and the Lewis Publishing Co., respectively, as follows:

"To chief post-office inspector:

"As you may remember, the postmaster at St. Louis, Mo., under date of April 11, advised this office that he has determined, in the case of the Woman's Farm Journal, published by the Lewis Publishing Co., of St. Louis, that the legitimate list of subscribers to such publication numbers 141,328, and that he has held that the transient second-class rate would be required on all copies mailed in excess of such legitimate subscriptions, numbering 141,328, together with samples not to exceed that number, or a total of 282,656.

"From the decision of the postmaster the publisher has appealed and deposited \$3,000 to cover postage at the rate of 1 cent per copy upon anticipated mailings of 300,000 excess copies. The postmaster states that his decision was based upon the facts developed in the investigations made by his office and the inspectors of your division, and that the particulars were fully reported to you.

"The Postmaster General having directed me to pass upon this appeal, I have to request that you will oblige me with the evidence referred to, and any other evidence that may be in your office bearing upon the question as to the number of subscribers properly constituting the legitimate list, if any, of the Woman's Farm Journal.

"Mr. Bacon, superintendent of the classification division, informs me that he spoke to you about this evidence yesterday morning, but was unable to obtain it. If it can not be given in its original form, copies will be sufficient.

"As the Postmaster General has directed this case to be taken up at once, an early reply is requested."

"To the Postmaster:

"Your letter of April 11, inclosing a copy of your letter of April 6 to the Lewis Publishing Co., a copy of their reply and of receipt given them for deposit, and your letter of April 12 inclosing a copy of letter of the same date to Lewis Publishing Co., were all received and have been considered by this office and by the Postmaster General.

"An investigation into the second-class privileges of the Woman's Farm Journal and the Woman's Magazine is now being made by this office. It involves an inquiry into the number of copies of each publication which, so long as these publications remain in the second class, should be admitted to the mails monthly at the rate of 1 cent a pound.

"In your letter of April 11 you state:

"The number of 141,328 as representing the legitimate subscriptions to the Woman's Farm Journal, and the number 539,901 as representing the legitimate subscriptions to the Woman's Magazine, are based on a count made of the current subscription card records of these publications as kept and submitted by Mr. Lewis, president of the company, which count was made by inspectors in conjunction with 54 trusted and experienced clerks from my office. The accuracy of this count has been confirmed by replies to inquiries made since by clerks in my office, who, from the monthly mailings of each publication sent since October, 1905, have selected a representative list of names and addresses

from the mailings thereof upon which to base these inquiries and to thoroughly and fairly test the legitimacy of the list.

"That the legitimate list of subscribers reaches even the numbers above indicated is challenged, as recent developments show practically a thousand subscriptions obtained in one instance at the rate of 5 cents per annum, through names furnished by an advertiser interested in the circulation of the publications for advertising purposes. This is representative of other like cases brought to our attention. Another illustrative case shows over fifteen hundred subscriptions obtained since January 1, 1906, by so-called clubbing arrangements with another newspaper, by which the Woman's Magazine is practically being sent gratis as a premium, the nominal rate of 5 cents per annum being charged.

"This office is confident that it has facts and evidence to enable it to maintain its position fully against any showing that the Lewis Publishing Co. may submit in connection with their appeal to your office. Further report will be submitted along the lines made necessary as soon as the claims of this company are received by me."

"You are accordingly requested to furnish this office at once, for consideration in such investigation and the appeal of the Lewis Publishing Co. from your ruling in the case of the Woman's Farm Journal, all the evidence referred to in the letter quoted, as well as all other evidence in your possession bearing upon the question as to the number of legitimate subscriptions to each of these publications, the number of sample copies mailed, and the excess over such legitimate list and samples. This evidence should reach me before Friday, April 27, on which date the publisher will be heard on his appeal from your ruling.

"P. S.—If the originals of the evidence referred to can not for any reason be sent, please furnish copies."

TO THE LEWIS PUBLISHING CO.

"The ruling of the postmaster at St. Louis, dated April 6, concerning the excess mailings of the Woman's Farm Journal, and the ruling of April 12, concerning excess mailings of the Woman's Magazine, have been reported to this office with notice that you had appealed from the ruling in the case of the Woman's Farm Journal. Your letter to the Hon. Jesse Overstreet with accompanying statement in which that appeal appears to be embodied has also been received by this office. Although these latter papers can not in strictness be said to constitute an appeal to this office from the ruling of the postmaster, Nevertheless they will be treated as such.

"As a result of his investigations the postmaster has found and determined that the legitimate subscriptions to the Woman's Farm Journal number not to exceed 141,328, entitling the publisher to mail samples not to exceed an equal number and that the subscriptions to the Woman's Magazine number not to exceed 539,901, entitling the publisher to mail samples not to exceed that number.

"With regard to your appeal from the ruling of the postmaster as to excess mailings, I have to inform you that the facts found by the postmaster will, in the absence of evidence to the contrary, be taken as prima facie correct. You will be accorded an opportunity at this office April 27 next at 2.30 p. m., to present any and all evidence to the contrary which it may be your wish to lay before me for consideration in connection with your appeal.

"In this connection you are also informed that the question of the right of these publications to second-class entry is in dispute."

Under date of April 23, 1906, the chief post office inspector addressed me as follows:

"Answering your letter of the 19th instant, I regret that I am unable to give you either the originals or copies of reports of inspectors bearing upon the circulation of the Woman's Farm Journal of St. Louis. It is the custom of this office, whenever an indictment has been returned in a matter which has been investigated by post-office inspectors, to intrust the entire case to the Department of Justice. Following this custom, all papers bearing upon the business methods of Mr. E. G. Lewis were forwarded to St. Louis to be placed at the disposition of the United States attorney, at whose instance the indictment was returned in this case. I have no doubt that Col. Dyer, the United States attorney, will permit your representatives to have access to all these papers and to make copies if they are needed so far as may be done without interfering with the criminal prosecution.

"As Mr. Lewis has very bitterly assailed the character, motives, and intelligence of the inspectors who have made the investigation, it is suggested that an investigation on independent lines, as far as possible, will be more satisfactory to this office, and I have to ask that the statements of the inspectors shall not be used in your investigation unless your representatives shall be satisfied that they are founded upon facts."

Under date of April 23, 1906, the postmaster wrote me the following letter:

"I am in receipt of your letter of the 19th instant, quoting largely from my letter to you of the 11th instant, informing me of an intended hearing in the matter of the Lewis Publishing Co. on the 27th instant at Washington, and requesting me to present the evidence I have, or copies thereof, before that date.

"In reply I beg leave to state that your request will be complied with so far as it is practicable to do so.

"Before narrating all the facts, however, permit me to express my regret that you have not seen fit to comply with my request of the 11th instant for the papers submitted by Mr. Lewis challenging the correctness of the position taken by this office relative to the legitimacy of the subscription lists to these publications.

"Had these papers been brought to my attention, I could submit a more intelligent and a briefer report; without them it becomes necessary for me to take up a multitude of facts and circumstances, and to repeat facts already stated, many of which could doubtless be eliminated were I not blinded as to what particular issues Mr. Lewis has raised in his appeal.

"The ramifications are so great, and the evidence so intricate and necessary of explanation in many particulars, and the time is so short that I do not hesitate to say that I fear that if this is to be the extent to which the Government is to be heard in this appeal, its interests will be inadequately represented; especially will this be true if Mr. Lewis is there in person with his profuse and specious explanations and representations, with nobody (acquainted with the facts) there to combat him.

"Entering, therefore, upon a recital of the facts, I will state that in the spring of 1905 an investigation by inspectors was made of the Lewis Publishing Co. and the People's United States Bank, both conducted by E. G. Lewis. From information since obtained, I learn that during the month of May, 1905, as a result of these investigations, revocation of second-class privileges granted the Woman's Magazine and the Woman's Farm Journal (published by E. G. Lewis) was recommended, and that at the same time a fraud order was recommended against the People's United States Bank, E. G. Lewis, its president, and its other officers. In June, 1905, a hearing was granted Mr. Lewis at Washington by the Assistant Attorney General for the Post Office Department, on the recommendation of the fraud order against the bank. On the same day a hearing was granted him by your office on the question of the revocation of his second-class privileges; subsequently the Assistant Attorney General recommended to the Postmaster General that a fraud order be issued. On July 6 the Postmaster General, upon this recommendation, issued the said fraud order against Lewis and his bank, which fraud order is still standing. This bank fraud was promoted and made possible by the use of the editorial columns of the Woman's Magazine and Woman's Farm Journal.

"On December 1 following Lewis was indicted for devising a scheme to defraud in connection with the promotion of his bank, and also for conspiracy with other officers of the Lewis Publishing Co. to defraud the United States of large amounts of revenue, resulting from mailing copies of his publications at the pound rate, in excess of the number he was legally entitled to mail. These criminal cases are still pending, and will be brought to trial within a month or two. No action, so far as this office is advised, has been taken by you in connection with the recommendation and hearing on the matter of revoking Lewis's second-class privileges.

"Since the fraud order was made effective Lewis has vilified and maligned every officer in any way connected with the issuance of the fraud order against him from the head of the department down, including the judge of the United States court, and has placed all of them in the category of thieves, conspirators, dishonest officials, dupes, or incompetents. In letters signed by Lewis, and in articles published regularly in his publications since the fraud order was made effective (all of which are teeming with anarchistic statements and charges of official corruption), your name alone, as an official, has received favorable comment. The effect of this on thousands of his credulous readers is appalling, as is evidenced by the fact that not only I as postmaster, but other officials of the

department here in St. Louis, have received many letters of vituperative condemnation for the course we have pursued in our efforts to protect the revenues of the Government.

"About September 1 last information reached me that Mr. Lewis was systematically mailing his publications to 'actual subscribers' in distinguishing wrappers; my employees were instructed to make a proper separation and notation of the September mailings of the Woman's Farm Journal and the September mailing of the October issue of the Woman's Magazine. These tests confirmed the information received as to the distinguishing wrappers. Beginning with the date of October 5, 1905, the mailings of the Woman's Farm Journal were again weighed and tested with the same confirmatory results. On October 13, 54 clerks from this office were detailed by me to visit the Lewis Publishing Co.'s plant and call for and count their subscription lists. This was done in conjunction with the inspectors who were working on the case. All of the card records bearing names of subscribers were called for from Mr. Lewis, and when the count was completed the number of actual current subscribers to the Woman's Farm Journal was found to be 141,328, and to the Woman's Magazine, 539,901.

"In the meantime the matter had been presented to the United States attorney for the district, who advised the holding of all of the illegitimate mailings of the October Woman's Farm Journal as evidence in the criminal case to be instituted by him.

"Attempts to test the October mailings of the November issue of the Woman's Magazine by distinguishing wrappers were thwarted by Lewis's action in changing the system of wrapping after our count of his subscription lists and after his learning that the distinguishing system of wrappers had been discovered by us; but a test made from names selected systematically from his mailings of this issue of the Woman's Magazine showed the percentage of illegitimate mailings to be practically the same as was found by the distinguishing system of wrappers used the month previous. Since that time both publications have been mailed without system as to distinguishing wrappers, and with every apparent effort on Mr. Lewis's part to prevent the department, if possible, from gathering further facts as to the exact number of his illegitimate mailings.

"We have continued since that date testing his mailings by inquiries through postmasters, as to addresses shown on his publications, with the result that not to exceed 55 per cent of those mailed by Lewis as legitimate subscribers (not marked samples) are legitimate subscribers to the Woman's Magazine and not to exceed 56 per cent are legitimate subscribers to the Woman's Farm Journal. These are general averages arrived at from the full five months' tests since the count.

"From the tests made and evidence in our possession it is shown that prior to the date of our count Lewis was padding his mailing lists by the use of names purchased for sample-copy purposes and not by the use of expired subscriptions. After the count Lewis resorted largely to the use for padding purposes of his expired subscription lists covering a period ranging from one month to three years, of a number about equal to his actual list, as shown by his subscription card records, not abandoning entirely the use of purchased sample-copy names. His attempt to legalize expired subscriptions was made in face of standing notices carried in both of his publications reading as follows:

"Discontinuances: Subscribers wishing the Woman's Magazine stopped at the expiration of their subscriptions need not notify us to that effect. We consider it their wish to have it discontinued if they do not renew promptly when notified that the time paid for has expired. * * *

"If you find this paragraph marked, it means that your time is out and that we will stop sending the magazine if not renewed within 30 days. We do not want to lose you, so please renew at once. * * *

"We discontinue sending papers when time paid for expires unless renewed within 30 days."

"Lewis's alleged 'citizens' committee,' in charge of Mr. L. B. Tebbetts (a director in one of Mr. Lewis's enterprises—the University Heights Realty Co.), lays claim to the legitimacy of expired subscriptions under the amendment to section 436, Postal Laws, promulgated December 16, 1905, by your office; with this exception their count and the count made by this office are practically alike.

"As bearing on the question of the number of legitimate subscribers to the Woman's Magazine, Lewis made affidavit in this office on October 12, 1905, that he had over 800,000 'paid-in-advance subscribers.' On March 22, 1905, some six

months previous, when asked by the inspectors he states in writing that he has in cash-paid-in-advance subscribers to the Woman's Magazine over one and one quarter million, and to the Woman's Farm Journal over half a million. In addition to this his September mailings of the October issue of the Woman's Magazine (made from September 20 to September 30, 1905), before my count was made, shows that he mailed but 651,155 copies of the Woman's Magazine as regular subscribers and 464,055 as samples, and that on October 20, just after the count, he mailed of the November issue of the Woman's Magazine as regular subscribers 1,553,425 copies and 96,310 as sample copies, an alleged increase of 903,270 regular subscribers in one month and an alleged decrease of 377,745 sample copies in one month. In face of these indisputable facts, I can not understand why any of his statements or explanations are accepted as truthful or why he should be given the sufferance of second-class privileges another day.

"Returning to the number granted Mr. Lewis by this office as legitimate subscribers, it should be stated that under what appears to be the proper construction of the postal laws and the recent amendment of your office, a large proportion of this number are not legitimate subscribers according to this ruling. Mr. Lowenstein (who, with Mr. Walter B. Stevens, had charge of the count of Lewis's subscriptions made by the alleged 'citizens' committee'), admitted to us that of the subscriptions counted the class containing the largest number of subscribers was the '5-cent clubs'; the next largest, 'single subscriptions'; and the next largest, '6-cent clubs' or 'renewals.' From this it will be seen that by the reduction made by Lewis from the already nominal subscription price these subscriptions are illegitimate. Further, as stated in my letter of the 11th instant, this number is unquestionably made up to a considerable extent of subscriptions obtained in contravention of the different rulings of your office. In one instance practically 1,000 subscriptions were sent in by a dealer in 'face and tooth powder' for advertising purposes; the rate of subscription paid was 5 cents per annum. Another case is where over 600 subscriptions were obtained since January 1, 1906, by so-called 'clubbing arrangements with another newspaper,' by which the Woman's Magazine is practically being sent gratis as a premium, the nominal rate of 5 cents per annum being charged. The entire list of these names and addresses is now in the hands of the prosecuting officers. Another illustrative case is where a medicine company in a southern city advertised to send 'free' the Woman's Magazine for one year for two cartons (or outside wrappers) taken from 50-cent bottles of medicinal preparations. Upon investigation, it developed that in return for advertising in the Woman's Magazine, Lewis supplied this company with 400 yearly subscriptions to the Woman's Magazine free, the list of names being supplied by the drug company.

"In addition to this some 200,000 names taken from the sample lists, have been added by Lewis to his legitimate subscription lists of persons who have never sought and paid for the publication. This has been done under the pretense that their subscription was paid out of a 'special fund' donated by Lewis's friends, the names to be selected by Lewis; but even under this arrangement it is in evidence that the addresses did not receive the publications continuously or in consecutive months; in other words, the lists under this arrangement were changed monthly. These facts are all supported by evidence now in the hands of the prosecuting officer of the Government.

"On the facts above outlined and on other facts, all of which can be corroborated by evidence now in the hands of the prosecuting officer of the Government, my action was based in demanding of Mr. Lewis additional postage on his publications, and my recommending to the department the revocation of his second-class privileges on both publications, which recommendation I now desire to decidedly renew.

"As a result of the second presentation of the Lewis case to the grand jury this week, and the continuous need of this evidence by the United States attorney and the inspectors in the preparation and conduct of the criminal case against Lewis, and because the prosecuting officers have expressed the inadvisability of forwarding the evidence or copies thereof at this time and object to it, I regret to state that I find it impracticable to comply with your request to transmit the documentary evidence in his case.

"In conclusion, permit me to state that I have not acted in the premises named without full realization of my responsibilities, and am not insensible to the criticism and abuse which, on the part of Lewis and his friends, has followed such action and which will continue so to do. As postmaster, however, I found it my duty to so act in order that the revenues of the Government already sub-

jected to frauds perpetrated to the extent of some \$75,000 to \$100,000 in the past two years might not be further defrauded to the extent of about \$8,000 per month; and it is my intention to continue the performance of this duty faithfully and fearlessly. In doing so it is my earnest hope that the officers at the head of the bureau having jurisdiction over these abuses and having the power to stop them, will give me the loyal and effective support that is due a postmaster under such circumstances.

"I desire to again express it as my conviction that not only should the additional postage collected from Mr. Lewis be retained by the Government, but that the second-class privilege granted the Woman's Magazine and the Woman's Farm Journal should be immediately revoked, because of the unquestionable illegitimacy of his subscription lists and his gross abuse of second-class privileges in the use of these publications primarily for advertising purposes."

Certain portions of this letter of the postmaster indicated so unmistakably an attitude of insubordination on his part that, manifestly, they could not be permitted to pass unnoticed. On April 27, 1906, therefore, I sent him the following reply:

"Your letter of April 23, a copy of which was also sent to the Postmaster General, is received.

"This is not a reply to such parts of your letter as are responsive to my letter of the 19th instant calling for information. There are certain portions of your letter, however, not concerned with the merits of the matter to which it relates, which, by reason of their unusual character, require special notice at this time.

"You should understand that the second-class mailing privilege of any publication depends upon the facts pertaining to that publication as mailable matter, and the circumstance, if true, that a publisher has 'vilified and maligned every officer in any way connected with the issuance of the fraud order against him, from the head of the department down, including the judge of the United States court, and has placed all of them in the category of thieves, conspirators, dishonest officials, dupes or incompetents,' or the circumstance that the statements made by him are anarchistic, or that any one official has not been the object of his displeasure, are matters wholly disconnected from his right to the second-class mailing privilege, and are matters which you should not permit to enter into the consideration which you as an official are required to give the case. If the publisher has libeled you or any other official there is a remedy at law.

"It is especially important that an official charged with administering the postal laws and regulations uniformly should, in the discharge of his functions, be entirely unbiased by such circumstances as those upon which you dwell in your letter. Particularly should you endeavor to eliminate from your investigation and report upon the physical facts involved in the inquiry the supposed effect, however appalling in your judgment, of these statements upon the readers of the publication. Neither should you take into consideration as an official the letters of vituperative condemnation which you say you have received. While your protestation that you intend to continue to perform your duty faithfully and fearlessly is commendable, and you will have the support of this bureau whenever your action is just, lawful, and reasonable, you should not, by reason of the criticism and abuse to which you say you have been subjected, put yourself in the frame of mind of one suffering from delusions of persecution, nor should you permit the irritation, which as an individual you may naturally feel on that account, to drive you to imperil the success of administration by overzealous or hysterical measures.

"It is my duty to inform you that the cases of the publications mentioned in your letter are now with this bureau. They involve two questions: First, whether the excess mailings alleged by you are, as a matter of fact, excess under the usual rules applicable to all publications; second, the right of the publications, as such, to the second-class mailing privilege.

"The facts with respect to the fraud order against the People's United States Bank and the indictment of Mr. E. G. Lewis in connection with the promotion of that bank and for conspiracy to defraud the postal revenues, recited at length in your letter, are matters of which this bureau has already official cognizance and which, in the request for information concerning your ruling as to excess copies, you were not called upon to recount at length. Neither is it your duty to pass judgment upon the extent to which the Government is to be heard in the appeal from your ruling, nor upon the question whether its interests will be adequately represented. Equally superfluous is your statement

that 'no action, so far as this office is advised, has been taken by you in connection with the recommendation and hearing on the matter of revoking Lewis's second-class privileges.' Whether action has been taken by me or not is something which I may be assumed to know, and your statement to that effect in an answer to a letter calling upon you for information can be accounted for only upon the view that you assume to sit in judgment upon the actions of this bureau and to express contempt for them. You must know that conduct of this character will not be tolerated, and that a repetition of it will involve consequences more serious than the rebuke and reprimand which is now administered to you. This reprimand applies equally to other statements in your letter, among them the expression of your surprise that any of Mr. Lewis's statements or explanations are accepted as truthful, or that he should be given the sufferance of second-class privileges another day. The law has not delegated to you the power or authority to pass upon the second-class privilege of any publication, nor so long as you remain a subordinate officer of this department are you at liberty to review, or express your disapproval of, the decisions of your superiors.

"It is unnecessary for the present purpose to refer to further evidence in your letter of the attitude of insubordination in which you place yourself.

"It is hoped and expected that hereafter in the management of that part of the public business committed to your care you will confine yourself to the duties which you are called upon to perform, and in doing so will display sanity, moderation, and dignity."

It is proper to state in this connection that on the occasion of the postmaster's call upon me on April 30, 1906, he assured me that there was not the slightest ill feeling on his part and that in none of the expressions in his letter was there any disrespect intended.

It seemed quite clear to me from the foregoing letters that I was not to be allowed to freely have in my possession for review the evidence alleged to be in the hands of the postmaster and the inspectors. Following your verbal instructions I then proceeded according to my own methods and practices.

In response to the telegraphic request of the publisher the hearing was delayed until April 30, 1906. The matter was of such magnitude that the hearing occupied two days—April 30 and May 1. A copy of the report of the hearing has already been submitted to you. I hand you herewith another copy, marked "Exhibit A." It is important that this report be reviewed at this stage.

In this connection I desire to call attention to the fact that these publications had previously been considered as to their rights to second-class entry.

The hearing which was held June 17, 1905, grew out of the following copy of a telegram furnished this office:

"ST. LOUIS, May 31, 1905.

"Secretary of State Swanger here to-day. Greatly exercised over Lewis matter. He has been criticized for failure to act, and recently ordered Lewis to restore the \$400,000 withdrawn from bank, to cancel forged proxies, to account for all subscriptions received, to make good all material representations, and to select representative body of directors subject to approval secretary of state. Should money not be returned to-day, Swanger may take charge of bank. At secretary's request I have asked postmaster to withhold delivery of citation until 4 o'clock this afternoon sharp, purpose of facilitating collection of shortage. Situation quite acute and account of its importance and because Woman's Magazine now receiving second-class privileges largely by sufferance of department is, and has been, the vehicle of promotion of bank and for Lewis's schemes. I suggest concerted action part of assistant attorney and Third Assistant on reports of 16th instant. Please take up with proper officers.

"FULTON, Inspector in Charge."

Under date of July 8, 1905, I furnished you a memorandum of my views on the subject, of which the following is the closing paragraph:

"In closing I deem it proper to call attention to the seriousness of the function performed by the Third Assistant Postmaster General acting on behalf of the Postmaster General in relation to these questions of classification. Since it is utterly impracticable for the Postmaster General to sit in judgment on each case as it arises, the decision of the Third Assistant Postmaster General must be final in most cases. Such decisions affect one of the most extensive industries in the country and should be sound in morals as well as in law. Otherwise they may bring destruction to legitimate business enterprises

and discredit upon the postal service. It is therefore important that the Third Assistant Postmaster General should reach a judgment only after careful consideration of the evidence which experience has shown to be relevant and material. Especially should he do so without haste or bias, and uninfluenced by any preconceived notion."

To that you responded as follows, under date of July 12, 1905:

"Please have investigation made along the usual lines pursued by your bureau to determine whether the Woman's Magazine and the Woman's Farm Journal are entitled to transmission at second-class rates. It is desired that you will have this investigation completed as promptly as may be consistent with your general practice, and will bring the results to my attention.

"Until such investigation shall have been completed, it does not appear necessary to give the postmaster at St. Louis the instruction which you suggest in memorandum of the 5th instant, as continuance of the present practice will accomplish the same result."

The following correspondence is now particularly relevant. Under date of July 19, 1905, you wrote Messrs. J. H. Bromwell and Lucius Weinschenk, counsel for the Sawyer Publishing Co. et al. (publishers of several of the mail-order type of publications), as follows:

"Careful consideration has been given to the proposition in your letter of June 29, addressed to the Third Assistant Postmaster General, in relation to the pending injunction proceedings brought in the Supreme Court of the District of Columbia by the Sawyer Publishing Co., a corporation; William H. Gannett, publisher, a corporation; the George W. Willis Publishing Co.; and Lane's List (Inc.), a corporation, against the Postmaster General.

"You are informed that the department is unable to enter into any understanding or agreement with respect to the disposition of the pending cases which involves, or is conditional upon, any promise on its part whatsoever. If the publishers concerned desire, of their own motion, to dismiss the suits now pending against the Postmaster General, no objection will be interposed.

"As a part of the general policy and practice of the department, and quite independent of the dismissal of the suits, it is and has been the intention of the department to conduct an inquiry as to the present right of each of these publications now enjoying the second-class privilege under these injunctions, apart from the inquiries and hearings instituted prior to the injunction proceedings. Before conducting these inquiries (in which, of course, there will be a statutory hearing in respect of each publication) the department will endeavor to formulate and publish in general terms such explanations of the construction placed upon the terms 'designed primarily for advertising purposes, or for free circulation, or for circulation at nominal rates' and 'legitimate list of subscribers' as the nature of the subject will permit. But it must be distinctly understood that the department will decide each case upon its merits as developed by the facts in evidence.

"So far as may be consistent with this duty of determining the issues of fact in each case, rules will be framed which may be serviceable as guides to publishers, and there is no objection to allowing a reasonable time before the rigid enforcement of such rules will be insisted upon. You suggest that January 1, 1906, would be a proper date, and in view of the circumstances the suggestion is considered a reasonable one.

"From the foregoing it is not to be understood that the department will fail to act before January 1 upon any specially flagrant case of an abuse of the second-class privilege where the interests of the Government require prompt action. This, however, is not intended to imply that any one of the publications involved in the injunction proceedings is regarded as specially flagrant, but merely that the department reserves entire liberty of action as to such cases."

The foregoing letter was prepared in this office upon my understanding of your intentions made known to me in your memorandum of July 12, 1905, and in interviews which I had with you. Your signing the letter conveyed to me what appeared to be your complete concurrence in the policy it announced, and which had theretofore and has since prevailed in the work of the Third Assistant Postmaster General, namely, that of dealing with publications in classes under uniform rules applicable to all alike and published in advance to give notice to publishers of the purpose and effect thereof. The Woman's Magazine and the Woman's Farm Journal have never been regarded as positive abuses and certainly not "specially flagrant" ones. The publications themselves are of a better grade than the ordinary mail-order publication, and all the tests of circulation which have been made place them on that score also

above the average. Others who may have so regarded them are simply deficient in not having a survey of the whole field.

No rule changing practice which has been made since the reform began, but has been published and notice given as to when it would take effect, time being allowed publishers to make changes in their business to conform to the requirements. One reason for that is that the department itself is not clean-handed. The practices which it is correcting are not new, and it is not administering a new law. Publishers, therefore, are not to blame for not knowing that any practice common among them is wrong, and they are fairly entitled to have advance notice of what the department may now disapprove, but which, because of long seeming acquiescence, it did not formerly appear to disapprove. That consideration and spirit was the basis of the Bromwell-Weinschenk letter.

Under date of July 21, 1905, I sent you the following memorandum in response to yours of July 12. This indicates what my understanding was, and you have not at any time advised me that I was in error:

"In pursuance of the direction in your memorandum of July 12 to have investigation of the foregoing cases made along the usual lines pursued by this bureau, I have assigned them to be investigated in connection with the other mail-order publications covered by your letter of July 19 to Messrs. Bromwell and Weinschenk, which outlines the policy of dealing with the class to which they belong. In the meanwhile the present status is, as you direct, left unchanged and no instructions given to the postmaster at St. Louis."

A mail-order publication as such is not obnoxious to the law; but it has for a long time been believed that grave abuses exist in that class. Circular 25, dated December 16, 1905, was designed mainly to reach the abuses in that type of publications, but we have no warrant of law for making rules concerning subscriptions for one class of publications alone. All must be treated alike. Therefore, the rules in Circular 25 apply to all publications. That circular was the first rule published after the declaration in the Bromwell-Weinschenk letter. It was not felt that it would meet every requirement, because we could not foresee every situation which would arise in the course of business. We must wait and let experience show whether additional rules were required. If so, they should be formulated and published giving notice, as before, when they would take effect. As stated in my report to you, the point had not been reached where it was deemed wise to publish any more rules affecting circulation in addition to those in Circular 25. While some of those rules seem to be simple on their face, they create a revolution in the publishing business. Account had to be taken of this circumstance. It would not do to keep the whole publishing industry in a turmoil and wondering what would happen next. It is easy to create a panic in this regard. One other reason why we could scarcely formulate and publish additional rules was that Circular 25 had itself been suspended in two important particulars, and it would seem to be out of reason to consider new rules when those already published were not being enforced.

It was never contemplated that we would be called upon to determine whether or not there had been excess mailings at the pound rate on the mere questions of volume of expired subscriptions and the time carried. That is the real question in these cases, and the department has never before been in such a situation.

Had these cases arisen and been conducted under the practices of the bureau of the Third Assistant Postmaster General, no question as to excess mailings would have been raised. The broader question of the right of the publications to second-class entry at all would have been the issue; and in that case the rule stated in Circular 25 as to expired subscriptions would have applied. This certainly is made clear in my letter of March 22, 1906, to the chief post-office inspector, which will be found on page 16 of this communication. I quote the following therefrom:

"This rule charging the transient second-class rate upon excess sample copies is applied in cases where prima facie such excess mailing is not sufficient of itself to indicate that the publication should be excluded from the second-class rate by reason of it being 'designed primarily for advertising purposes, or for free circulation, or for circulation at nominal rates.' Where the mailing of such sample copies is, however, sufficient to justify that inference, the practice is not to make any different charge for the excess sample copies but to determine that the publication itself is not entitled to the second-class rates at all, and that all copies in consequence must be charged the third-class rate."

As already stated, the rule charging the transient second-class rate on excess copies was never contemplated to apply in such cases as *The Woman's Maga-*

zine and The Woman's Farm Journal. That rule was made for emergency or occasional cases where publications like the daily newspapers or periodicals of the higher class, for instance, the Washington Post or the Munsey Magazine, got out extraordinary large issues—more than twice the number of subscribers. The question of second-class rights with this type can not well be raised because of excess mailings of a single issue for a few issues, but it is quite a different matter where the practice is frequent or regular, as it is alleged to be in the case of The Woman's Magazine or The Woman's Farm Journal.

In the case of newspapers and periodicals of the kind mentioned these large editions are nearly always planned without knowledge of the prohibition of the law, and hence some rule to meet such situations is required. The hundred per cent rule meets the need. It is effective only because publishers are not willing to resist it, even though the department might not be able to maintain it under court review. If resisted, the department would not undertake to enforce it, but would take the alternative of declaring that the publication was not entitled to second-class rates at all. On the latter issue there is no doubt of our being able to maintain our position under court review.

The doubt as to our ability to maintain our rule of charging the transient second-class rate upon excess copies is due to the provisions of the act of March 3, 1885 (ch. 342, 1 Supp., 483—sec. 448, Postal Laws and Regulations). To the extent of its operation the rule in question sets the provisions of that statute aside, for there in plain terms it is stated that the publisher shall be charged only the pound rate and no limit is fixed. Our limit is fixed by a construction put upon the prohibitory clause of the act of March 3, 1879 (ch. 180, sec. 14, 1 Supp., 246—sec. 428, Postal Laws and Regulations). If a publisher should insist upon his right to mail excess copies at the pound rate as provided in the act of March 3, 1885, we would not try to enforce the rule; we would then revert to our right to rule the publication out of the second class altogether.

The foregoing general policy is what I sought to make clear to Assistant Attorney General Goodwin in a letter to him dated April 4, 1906, explaining the methods of dealing with this problem. The last paragraph of that letter is as follows:

"Often a publication or its circulation is found to be in conflict with the law or regulations in but a few particulars which, taken alone, are insufficient to establish that its primary design is contrary to the statute. Where the circumstances warrant such action the publisher is, as a matter of regular practice, given an opportunity to correct irregularities."

Had the postmaster reported, as provided in paragraph 6, section 456, Postal Laws and Regulations, that the publisher was mailing sample copies in excess of 100 per cent of his subscription list, or more copies than he was entitled to mail at the pound rate under the ruling in Circular XXV, or had the postmaster reported that he was holding excess copies, our action, if the case were being handled in the bureau of the Third Assistant Postmaster General, would have been to require the publisher, if he disputed the postmaster, to establish the legitimacy of his list of subscribers and the extent thereof, in order that we might determine whether he was mailing excess copies; or, if the circumstances warranted, he would have been given notice to show cause why the publication should not be excluded from the second class altogether. Failing to prove his right to mail at the pound rate the number presented, we would require him to pay the transient rate on the excess, or, on his refusing to do that and standing upon his right to the pound rate, as provided in the act of March 3, 1895, we should then proceed in an orderly way to take up and determine the right of the publication to second-class rates at all. A question of an excess mailing or some similar question with reference to any publication may recur frequently and be decided from time to time as it is raised, before the department deems it proper, in the course of uniform administration, to raise and decide the broader question of the right of the publication to second-class entry at all.

This course of procedure was clearly indicated in my letter to the chief post-office inspector under date of March 22, 1906. Therein I stated substantially that whether or not excess sample copies are, either standing alone or in combination with other relevant facts, sufficient to indicate that the publication is "designed primarily for advertising purposes or for free circulation or for circulation at nominal rates," depends upon all the circumstances in the case. If a postmaster be in possession of facts sufficient to justify the conclusion that copies of one or more issues of a publication offered for mailing at a pound rate are in excess of the publisher's privilege at that rate, then it is

his duty to charge upon such excess the transient second-class rate, assuming, of course, that should the publisher dispute the postmaster the question would be referred to the department for determination according to the established practices. In that letter I also stated:

"While the postmaster may not deny the second-class mailing privilege to a publication except upon a determination to that effect by the department after a hearing, it is his duty, assuming the right to that privilege, to charge the lawful rate upon every copy passing through his hands. Therefore, if the postmaster has before him facts which, in his judgment, justify his determining these copies to be subject to the transient second-class rate, he should notify the publisher of that fact and demand that such rate be paid before transmission."

All of the foregoing is stated merely to show the uniform practice in this office in dealing with the business of classifying and charging postage on second-class mail matter. It is in accord with the spirit of the published rulings and the instructions issued from day to day in the conduct of that business. Those rulings and that practice were followed in the case of the Woman's Magazine and the Woman's Farm Journal in so far as they have been dealt with by this bureau. It is important to now state again that these cases were not being handled by this bureau prior to your letter of instructions of April 14, 1905. All of the papers in the case, whether from the postmaster, the publisher, or others, as they reached my hand were promptly transferred to you, as already shown in this communication, and I asked you repeatedly to instruct me if you desired this bureau to deal with the cases. You gave no such instructions. My memoranda, quoted herein, show that I religiously refrained from any meddling with the case whatever, lest I interfere with or thwart the plans or action of some other officer who might have been dealing with the case. I was entirely in the dark as to what was being done, save for the correspondence which was coming to me and being transferred by me to you.

I now address myself to answering the specific inquiries in your memorandum of February 13, 1907, in the order in which they are made. To make proper and complete answers involves more or less a discussion of the whole second-class problem.

You mention and quote circular 3, published in the January, 1905, Postal Guide, as the rule which should govern. That is an error. Circular 3, except in so far as its valid conditions have been transferred and incorporated into circular 25, is inoperative. Circular 25 was the rule governing this office in dealing with the cases.

I quote the following from your memorandum, beginning on page 3:

"On page 3 of your report it is stated that the action of the postmaster at St. Louis from which an appeal was taken to you by the Lewis Publishing Co. was under authority of the following ruling promulgated by you:

"If sample copies in excess of the number * * * (100 per cent of the subscription list) be presented for mailing, they are not entitled to the pound rate of postage. They are chargeable with the transient second-class rate of 1 cent for each 4 ounces or fraction thereof, to be prepaid with stamps affixed on each separately addressed copy or package of unaddressed copies."

"Was not that action of the postmaster taken under authority of section 456 of the Postal Laws and Regulations of 1902, paragraph 6, as well as under that of the ruling just quoted, viz:

"The mailing by a publisher as sample copies of a larger number of copies than actually subscribed for in order to maintain a given circulation, or the continuous mailing of sample copies in excess of 100 per cent of the number issued to regular subscribers, or of such copies continuously to the same persons, will be deemed evidence that the publication is primarily designed for advertising or free circulation (see sec. 428), and the sample copies should be detained until the facts can be ascertained. The postmaster will promptly report the case to the Third Assistant Postmaster General."

"The postmaster also had to bear in mind the fact, as stated in your report, on page 21, that 'the publishers' privilege to mail copies at the pound rate is held to be limited to those sent to subscribers and those sent as samples.' It appears from the tables in your report that from the month of October, 1905, to the month of April, 1906, inclusive, there were mailed hundreds of thousands of copies of the Woman's Magazine at the pound rate which were neither sent to subscribers nor sent as samples. Was it not the sworn duty of the postmaster to collect postage on each one of these copies at the rate of 1 cent per copy? Was not the postmaster required by law, as well as the regulations, to proceed

as he did, and had he failed to enforce collection of the postage which he actually collected would he not have been liable upon his bond for the amount under section 4051 of the Revised Statutes (sec. 373, Postal Laws and Regulations, 1902), reading as follows:

"All postages, box rents, and other receipts at post office shall be accounted for as part of the postal revenues; and each postmaster shall be charged with and held accountable for any part of the same accruing at his office which he has neglected to collect, the same as if he had collected it."

"That the department holds postmasters to strict accountability in this connection is shown by the following note under paragraph 318, page 1030, of the Postal Guide for 1905:

"NOTE.—Postmasters are reminded that under the law (sec. 373, Postal Laws and Regulations) they are liable on their official bonds for loss of revenue due to faulty administration or neglect."

My answer to the foregoing is that I did not need to know and did not inquire under what authority the postmaster acted. That was wholly immaterial to the questions given me to decide. Whether the postmaster acted under the provisions of Circular 111, as printed on pages 1040-1041 of the January, 1905, Postal Guide, or Circular XXV, or section 456 of the Postal Laws and Regulations, made no difference. He had acted. His authority for the action was not a question before me. I was to determine whether he was right or whether he was wrong in his conclusions.

Prior to April 14, 1906, all correspondence received from the postmaster or from any source concerning these cases was transmitted to you promptly on receipt, and your instructions were asked. You gave none. Because of that fact no attempt was made by this bureau to look into the cases in any manner whatever or to determine any questions whatever concerning them or to advise or instruct the postmaster in any manner whatever, except as shown in the previous part of this letter. (See pp. 19, 20, 21, 22, 23, and 24.)

Your letter of April 14, 1906, placed the duty upon me of determining a question of appeal by the publisher from the postmaster's ruling as to mailings of excess copies; and the question of the right of the publications to second-class entry. On the latter question I have not reported. I have reported only on the question of excess mailings.

Yes; it is the sworn duty of a postmaster to collect the legal rate of postage on all mail matter passing through his hands when the legal rate has been determined; then he is liable on his bond for any amount which he fails to collect the same as if he had collected it.

Beginning on page 5 of your memorandum you say:

"The postmaster reported that of the November, 1905, issue of the Woman's Magazine, there were mailed as to subscribers 486,305 copies in manila wrappers and 579,125 in blue wrappers; total 1,065,430 copies. The postmaster also reported that but 574,165 copies of that issue were mailed as samples; the grand total of copies mailed being 1,639,595. Thus it appears by the postmaster's table that there was an alleged increase of 282,668 subscribers for the November issue of the magazine over those for the October issue. Even your own table shows an alleged increase in copies mailed as to subscribers of 134,554 for November over October, 1905, with only 4,905 increase in current subscriptions. Peculiar in this connection also is the alleged increase of 332,257 in copies mailed as to subscribers in April, 1906, over October, 1905, and a decrease in current subscriptions of 48,911 for the same period. What explanation is there for this?"

The tables appearing on pages 4 and 8 of your report are reproduced below:

TOTAL MAILINGS (COPIES).

[P. 4.]

Date.	Subscribers.	Samples.	Total.
October, 1905.....	852,034	603,181	1,455,215
November, 1905.....	986,588	531,676	1,518,264
December, 1905.....	1,127,898	345,000	1,473,898
January, 1906.....	1,182,851	317,818	1,500,672
February, 1906.....	1,176,921	312,439	1,489,360
March, 1906.....	1,138,898	390,426	1,489,324
April, 1906.....	1,184,201	292,296	1,476,567

SUBSCRIPTIONS.

[P. 8.]

Date.	Current.	Expirations.	Total.
October, 1905.....	576,802	198,632	775,434
November, 1905.....	581,707	187,589	762,296
December, 1905.....	603,477	175,494	778,971
January, 1906.....	577,771	196,584	774,355
February, 1906.....	559,812	224,492	784,304
March, 1906.....	529,717	277,011	806,728
April, 1906.....	527,891	292,747	820,638

"It will be seen by reference to the second of these tables that the number of copies of the publication claimed by the publisher as being sent to those whose subscriptions had expired, to wit, 579,000, is within 2,000 of the total current subscriptions, as shown on page 8 of your report.

"From this large mailing of the November issue to persons whose subscriptions had expired, it would appear that, as indicated in your report on page 10, the publisher was not, prior to the count of the postmaster and the inspectors, carrying on his list from 200,000 to nearly 300,000 names and addresses of such expirations in the hope or expectation of securing renewals. Had he been doing this prior to that count, it would not have been necessary for him to have sent this large number of expirations with the November issue."

Some of the statements above quoted are misleading. The figures 579,125, alleged to represent the number of copies of the November, 1905, issue mailed to persons whose subscriptions had expired, are taken from the conjecture of the postmaster based upon his inference from the color of the wrapper. The actual count, tabulated in my report, shows that the publisher had for that issue 576,802 current subscriptions, and in addition thereto 198,632 expired subscriptions (allowing expirations to be carried six and two-fifths months), making a total of 775,434. It should be understood that the two tables which you quote from my report have no definite relation to each other in the matter of the determination of the question of excess mailings, except as to totals.

The first shows the total number of copies mailed at the pound rate of the issues indicated, based upon the receipts issued by the postmaster, and the second shows the total number of subscriptions which the publisher had for his publication on the dates given, including those current and those which had been expired for not longer than six and two-fifths months. When the actual count shows, as it does, that the number of subscriptions which the publisher had for the particular issue in question was more than half of the number of copies mailed of those issues, it is of no value to insist, upon the basis of the postmaster's understanding of the significance of the wrapper, that the number of subscriptions claimed as expired amounted to 579,125. In the face of the actual count of the current and expired subscriptions at that time, the conjecture of the postmaster from the color of the wrappers ceases to have, if it ever had, any relevancy to the question at issue. Otherwise, we are begging the whole question to be decided by assuming that, in mailing a total of 1,518,264, the publisher did not mail as many samples as he was lawfully entitled to mail. The calculations of the postmaster, based upon blue and manila wrappers to which you refer, were wholly superficial, and grounded upon no real understanding or knowledge of the number of subscribers actually on the publisher's list.

The duty cast upon me by your direction was to find the exact mathematical facts with respect to the excess mailings of this publication. The question was whether or not the total number of copies mailed exceeded the total number of copies which the publisher was entitled to mail, including his sample-copy privilege. There can be no excess mailings by a publisher so as to subject him to the transient rate unless the total of his mailings of the issue in question exceeds the combined total of samples and subscribers, giving him the benefit of one sample for every subscription. Although there may be some difference of estimate as to the total number of subscriber's copies, whether current or credit, if the number finally arrived at multiplied by two does not exceed the mailing of the publisher, there is no power to declare that his mailing is in excess. Having the right to send samples to the amount of 100 per cent of his subscribers, if the total number does not exceed twice the number of such

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subscriptions, then there is in fact no excess mailing at the pound rate. The facts shown by the count for the month ending October 31, 1905, upon which the November mailing must be based, are:

Current subscribers	576, 802
Expirations	198, 632
Total subscribers	775, 434
An equal number of samples	775, 434
Total mailable at the pound rate	1, 550, 868

In short, the publisher was entitled to mail 1,550,868 copies, but actually mailed 1,518,264 copies, which, so far from being an excess over his privilege, is 32,604 less than he was clearly entitled to mail.

The mathematical count of the number of subscribers demanded by this investigation was made. When it was done the conjectures of the postmaster, based upon his inferences from the color of the wrappers, ceased to have any further value. If it be true that the publisher mailed 579,125 copies of the November, 1905, issue in blue wrappers, either he was so mailing a large number to persons whose subscriptions had been expired more than six and two-fifths months or to persons whose subscriptions were still current, or a large number of the copies so mailed were sent to nonsubscribers, possibly as samples, although not so marked. However that may be, the fact remains that his total mailing was considerably less than the number he was entitled to mail, allowing one sample copy for each subscriber's copy.

That not all copies mailed by the publisher in blue wrappers were sent to persons whose subscriptions had expired is evidenced by the investigations of the postmaster himself, for, in a letter dated May 23, 1906, addressed to Mr. Fettis, who was chairman of the commission which investigated the Woman's Magazine and the Woman's Farm Journal, he said:

"* * * On your arrival in my office we had an informal discussion at which time it appeared that you attached little or no importance to the mailings of the magazine in blue wrappers, as you remarked to my secretary, Mr. McBurney, 'I do not see why you attach so much importance to blue wrappers, as it is already conceded by Mr. Lewis that they are expirations and are mailed as such.'

"This much surprised me as my investigations show that Mr. Lewis has been mailing in blue wrappers, papers to persons whose subscriptions have expired as far back as two, three, and four years. He is also mailing in blue wrappers, papers to actual subscribers and to those who never subscribed, so I found by my tests.

"The significance of the blue wrappers is a most important factor in this investigation, particularly as the majority of the papers sent out on expired subscriptions (the twelfth issue) are being mailed in manila wrappers as current subscriptions, and not in the blue wrappers which should rightly inclose them.

"A test on simply the manila and white wrappers is incomplete. I am calling your attention to the above because of my desire to see the investigation you are making thorough and complete."

Furthermore, the postmaster in a letter dated December 19, 1906, transmitted to the third Assistant Postmaster General a statement showing the results of tests on the mailings of the Woman's Farm Journal from the October, 1905, issue to the November, 1906, issue, and on the Woman's Magazine from the December, 1905, issue to the November, 1906, issue, which results are based on letters of inquiry sent out by and returned to him up to December 18, 1906.

From this statement it appears that of the copies tested of various issues of the Woman's Farm Journal, mailed in blue wrappers, a percentage varying from 4.4 to 66.7 was sent to persons whose subscriptions had not expired, and a percentage varying from 5.7 to 20.9 was sent to nonsubscribers.

On the Woman's Magazine for the various issues during the period covered by the tests, it is shown that of the copies mailed in blue wrappers, a percentage varying from 9.5 to 28.2 was sent to persons whose subscriptions had not expired, and a percentage varying from 8.3 to 25.6 was sent to nonsubscribers.

That the result of these tests contradicts the publishers' advertised statement that only expirations are mailed in blue wrappers is of no value whatever as against the facts disclosed by the investigation. It only shows that the supposed evidence of the color of the wrapper is not conclusive as to the termination of the addressee's subscription, or even that he is a subscriber at all.

The question you gave me to decide was whether the publisher mailed excess copies, and not whether the regulation of the department requiring the stamping of the copies as samples (under the statute it is a privilege, not a requirement) had been complied with. A sample would not cease to be a sample and properly accountable as such in determining the total mailing, because it was not marked, or because it was put up in a blue instead of a manilla wrapper. It no doubt might fairly be assumed from the publisher's advertisement that copies mailed in blue wrappers were sent to those whose subscriptions had expired, but such evidence was not conclusive. The postmaster involved himself in confusion by assuming out of hand that all copies not marked samples were subscribers' copies and that all copies sent in blue wrappers were of necessity sent to persons whose subscriptions had expired. He deducted from the total only those marked as samples, and assuming all the rest to be subscribers' copies, divided them into current and expired upon the supposed evidence of the color of the wrapper. It was in this way that he reached the result that 579,125 were expired subscriptions and 486,305 were current subscriptions, in ignorance of the fact developed by the actual count that the number of expired subscriptions for that issue (estimated on the basis of their being carried six and two-fifths months after expiration) was 198,632, which, with the current subscriptions for the same issue numbering 576,802, made a total of 775,434, and justified the publisher in mailing an equal number of sample copies (775,434). These combined do not exceed the actual mailings for that issue as shown by the records of the post office. The question whether the publisher mails copies in excess of the number required for subscribers plus an equal number of samples, is altogether a distinct and different question from that of whether the copies mailed are stamped "samples" or otherwise identified as such.

That the post-office clerks themselves made mistakes in their record as to whether the copies were sent as subscribers' copies or as sample copies, seems to be established by Exhibit 47 of the report of the commission which investigated *The Woman's Magazine* and *The Woman's Farm Journal*, which I commend to you for review.

Concerning your question as to the increase in the number of copies mailed as to subscribers of 134,554 for November over October, 1905, I have to say that the explanation will be found in Exhibit 47 of the commission's report above referred to. It amounts to merely the publisher's statement. It may be taken for what it is worth. It, however, had no weight in my decision as to whether there was or was not an excess mailing of that issue. The question was one of totals, and I found the facts.

What number of expirations the publisher was carrying prior to the period covered by the count which was made by the commission from this bureau was not taken into account. I was charged with the duty of finding whether the publisher had, from the issue of October, 1905, to and including the issue of May, 1906, mailed excess copies at the pound rate. I did not investigate what his practices were prior to October, 1905, but found the facts as to the issues in question.

I quote from your memorandum beginning on page 7:

"The question before you for decision is thus stated in your report:

"The question is simply one of fact—did the publisher, under the ruling quoted on page 3, mail at the pound rate more copies of either publication than he was entitled to mail, and if so, to what extent did he exceed his privilege?"

"Further you say:

"The decision of this question depends entirely upon the number of subscribers; that is to say, in order to decide as to whether there was or was not an excess mailing at the pound rate it is necessary to find whether the persons whose names and addresses appear on the publisher's list as subscribers are such as a matter of fact, and the whole number of them, the publisher under the ruling being entitled to mail an equal number of copies at the pound rate as samples."

"Then it is said that—

"Whether the persons on the list are subscribers can not be decided upon the methods of the publishers in securing their subscriptions, but the result of the methods may be used in finding whether or not the persons whose names and addresses were found on the list were in fact actual subscribers; that is to say, the question of whether or not such persons are in truth subscribers turns not upon the matter of how they subscribed, or how they were secured, but is one of fact—did they subscribe?"

"The statement that 'whether the persons on the list are subscribers can not be decided upon the methods of the publisher in securing their subscriptions,' seems to be contradictory to paragraphs (a), (b), (c), (d), (e), (f), (g), (i), and (j) of your circular of December 16, 1905."

The things enumerated in Circular XXV from (a) to (j) are simply indications of the ways in which alleged subscriptions are often placed upon the books of a publisher. The description of the way in which such alleged subscriptions are sometimes placed upon the books does not establish any rule of law with respect to the testing of the subscriptions. The question remains whether the subscription is an actual subscription, and the purpose of the sections (a) to (j) was simply to point out certain methods which might be employed for the purpose of placing such subscriptions upon the books. They are not conclusive as to the facts in establishing whether any such subscription is or is not valid. The statement in Circular XXV that they are devices by which certain alleged subscriptions are secured is not a declaration that every subscription obtained in one of the manners specified must of necessity be a false subscription.

Your error probably arises through a misconception of the rules. So far as known this publisher offered no premiums at all to subscribers. It matters not how a subscriber was secured if, as a matter of fact, he did subscribe. So far as the ruling went in this case, to constitute a person a subscriber he must have paid the full subscription price without any rebate whatever. The mistake you appear to be laboring under is due to the failure to discriminate between the giving of compensation to agents by way of premium or otherwise, and a rebate of some kind to the subscriber himself. It is wholly immaterial what a publisher does with the money secured from a subscriber. He may have paid part or all of it to an agent securing the subscription. As stated in my report, the question is one of fact: Did the person subscribe? I ruled out all subscriptions secured through clubbing arrangements where it appeared that the publication was given to any person as a premium for subscribing to some other publication, or for purchasing an article of merchandise, or where there was any reduction whatever in the subscription price to the subscriber. Whether it was with or without the knowledge of the publisher was wholly immaterial, and I so stated.

With a view to making the explanation complete, I beg to say that the seeming conflict with paragraph (f) of the circular of December 16, 1905, applies in only two cases, so far as was ascertained. One was the case of Conkey's Home Journal, formerly published in Chicago. There was in that case, however, no conflict with paragraph (f) because at the time that Conkey's Home Journal was merged with the Woman's Magazine it was not a defunct publication, but a going publication; and the merging of publications one with another is constantly going on in the publishing business and is a perfectly legal proceeding. The second was the case of the New Empire, formerly published at Kansas City, Mo., and purchased by the Lewis Publishing Co. At the time of the purchase it was a going enterprise and was not defunct, as it must have been to fall within the prohibition of paragraph (f). We have only the publisher's statement in this latter case, however, as nothing was found in the records. The sending of copies of the Woman's Magazine in fulfillment of subscriptions to these publications has been long since discontinued, according to the publisher, the subscriptions having either expired or become renewed to the Woman's Magazine.

I quote the following from page 8 of your memorandum:

"On pages 5 and 6 of your report you say:

"Consideration must be given to the circumstance that this publication is sold at a very low rate, and naturally the publisher could not afford a too expensive system in the securing, classifying, handling, and accounting methods. The publisher stated at the hearing before this office substantially that he had sought to observe every known rule and limitation of the Post Office Department in the conduct of his business, and if it were found that any practice or method of his was in conflict with the rules he would immediately amend the same, for he stood ready to meet all requirements as soon as he could find out what those requirements were."

"It has been claimed by the Lewis Publishing Co. that it conducts the most profitable publishing business in the world. Accepting this claim as true, why should the company be excused for failing to install and keep an adequate and accurate system of records and accounts, from which the true condition of its business could be ascertained and its methods and practices in respect

of its second-class mailing privilege shown to be in conformity with law and postal regulations?

"If it be true that the subscription price is so low that the publisher can not afford to keep accurate accounts, so that his minutes will bear an investigation, then it would seem that the subscription price must be merely nominal, and that that ought not to excuse him from keeping such accounts."

This argument would seem to be that because the business is profitable as a whole, the publisher can not be excused from maintaining a system of accounting for subscriptions which would eat up all of the revenue from subscriptions. This is simply reasoning in a circle, for, if the publisher of a low-priced paper is compelled to maintain a system of accounting for each subscription in commensurate with the revenue derived from that subscription, there would no longer be the profit which is taken as the basis of this argument. This proposition is clear: No publisher can in any case be required to maintain for his publication a business system more expensive than the business will justify. If, by a system no more expensive than the business will justify, he is able to maintain a profit, the existence of that profit can not be made the ground for requiring a system which would destroy the profit.

It has never been held that a publisher's methods of keeping his accounts or records are subject to regulation or supervision. There is nothing in the law or regulations which requires a publisher to keep any record at all of the persons he claims as subscribers. If the department raises the question of whether the list of subscribers is legitimate, as required by law, it is up to the publisher to prove its legitimacy. If his records be insufficient to establish that or any other essential fact upon which second-class entry depends he suffers accordingly, since he may be deprived on that account of second-class rates upon the ground that he can not establish that his publication meets the requirements of the law. The burden of proof is upon him. In this connection section 1593, Postal Laws and Regulations, applies:

"Any person who shall submit or cause to be submitted to any postmaster or to the Post Office Department or any officer of the postal service any false evidence relative to any publication for the purpose of securing the admission thereof at the second-class rate for transportation in the mails, shall be deemed guilty of a misdemeanor, and for every such offense, upon conviction thereof, shall be punished by a fine of not less than \$100 nor more than \$500."

This order of procedure was reversed in these cases, since the department undertook to show that the publisher was not entitled to mail at the pound rate the number of copies which he did mail. It was not left to him to show that he was entitled to mail that number of copies.

As indicating the method of procedure heretofore employed in such cases, the following is illustrative. The postmaster at St. Louis has just reported that the *Journal of Agriculture*, published by the Lewis Publishing Co., has mailed an excessive number of sample copies with the mailing of January 23, last. The following letter was sent him February 26:

"In further reply to your communication of the 13th instant you are informed that your action in requiring the transient second-class rate of postage on an alleged excess number of sample copies of the *Journal of Agriculture* presented for mailing on January 23, is approved unless the publisher is able to show that the number of sample copies of the issue in question mailed did not, as a matter of fact, exceed his actual number of subscribers for that issue."

In this case it will be seen that it is up to the publisher to prove his rights. We do not go in and concern ourselves with his business methods or the sufficiency or insufficiency of his records. We reserve the right, however, to pass on the sufficiency of his proof when presented.

The following is quoted from your memorandum, beginning on page 8:

"On page 7 of your report you say:

"The report of the commission and the voluminous exhibits accompanying it show the exactness and closeness of scrutiny in the work as a whole. The result of every test is favorable to the publisher, and where inquiries were addressed to the subscribers themselves the replies favored him to an average of about 90 per cent or over."

"This statement of the percentage of instances in which the claims made by the publisher were substantiated is in striking contrast with the report of the postmaster at St. Louis, which shows that an average of only 56 per cent of persons claimed as subscribers, and in respect of whom inquiries were made of

postmasters at the post offices of address at the rate of 1,000 a month, were actual subscribers.

"The table on page 4 is supposed to represent the actual mailings of the Woman's Magazine for the months stated, consisting of regular subscriptions and samples. The table on page 8 is said to represent the copies of the publication for those months which the publisher was entitled to mail, as ascertained by an actual count of subscribers' orders by the commission, including those expired. It appears that at the time this count was made (October, 1905), the publisher was not treating subscriptions which had expired more than three months previously as legitimate subscriptions; but conceding that they should be so regarded to the extent indicated by your second table the total number of subscriptions to which he was entitled by your count of subscription orders, as shown by that table, is much less each month than the number that the publisher mailed as regular subscriptions alone, according to your first table, the difference ranging from over 76,000 in October, 1905, to over 408,000 in January, 1906. In April, 1906, the difference was about 363,000. What explanation can you give for regarding as actual subscribers persons to whom copies are sent so largely in excess of the number found by your commission to be entitled to go at the pound rate, even though expired subscriptions be included? The excuse offered is:

"The totals given in the foregoing table it will be seen do not agree with the estimates made from the pounds mailed, as shown by the receipts issued by the postmaster. They are considerably less in each case; but at every mailing covered by the investigation the list of current subscriptions fairly allowable under the rules, excluding expirations (credits), was more than the number of sample copies mailed with two exceptions, that of the October, 1905, issue and that of the May 1906, issue. The current subscriptions for these issues, excluding expirations, were for October, 1905, 576,802, while it appears from the estimate made from the postmaster's report of weight that 603,181 sample copies of that issue were mailed; and for the May, 1906, issue 527,831 current subscriptions were found, while the estimate of the mailing of sample copies is 547,701. Therefore, except for those issues, the question of whether the publisher exceeded his privilege to mail copies at the pound rate is easily and clearly disposed of. Whether or not there were excess mailings with the issue of October, 1905, and May, 1906, turns upon the question of whether the so-called expirations are allowable. If allowable the publisher is more than safely within his privilege; indeed, he might have mailed many thousand more."

"The reference in the foregoing statement to the month of May, 1906, is evidently intended for April, 1906, as shown in the two tables. It is said that while for the May, 1906 issue 578,811 current subscriptions were found, the extent of the mailing of sample copies as taken from the postmaster's record of weight is 547,701. As a matter of fact the table on page 4 shows the number of sample copies mailed in the month of April, 1906, as 292,296, instead of 547,701; the discrepancy being over 255,000. How do you explain this discrepancy?

"Your statement that the totals of copies actually mailed do not agree with the estimates made by you, but that at every mailing covered by the investigation the list of current subscriptions fairly allowable under the rules, excluding expirations (credits), was more than the number of sample copies mailed, with but two exceptions, may explain the large mailings as samples, but it does not explain or excuse the mailing as subscription copies of copies largely in excess of the number which, according to your own estimate, the publisher was entitled to mail during the months shown in the table. The contention of the postmaster at St. Louis is not alone that the publisher has mailed sample copies, so marked, in excess of the number he was entitled to mail, but that he has mailed as going to subscribers, copies of the publication largely in excess of the number entitled by law to be so transmitted. The publisher is required under the regulations to mark "Sample copy" on the exposed face of every sample copy, or its wrapper, or on the wrapper of the package which may contain a bulk number of such copies. Also under paragraph (b), section 317, page 1036, of the Postal Guide for January, 1905, the publisher is required to "make separate packages (or sacks) of (1) samples," (2) of other copies subject to postage at the pound rate, and (3) copies entitled to free county circulation; and when so presented each kind must be weighed separately, fractions being counted full pounds in all cases * * * and so recorded in the receipt book."

"The publisher offered, and the postmaster accepted, as mailed to actual subscribers the following number of copies for the months shown below, in

excess of the number which you report him to have been entitled so to mail, even with the inclusion of expired subscriptions:

Issue.	Copies.		
	Number mailed.	Number entitled to mail.	Excess.
October, 1905.....	852,034	775,434	76,600
November, 1905.....	986,588	762,296	224,292
December, 1905.....	1,127,896	778,971	348,927
January, 1906.....	1,182,854	774,355	408,499
February, 1906.....	1,176,921	784,304	392,617
March, 1906.....	1,138,868	806,728	332,140
April, 1906.....	1,184,291	820,638	363,653
Total.....			2,146,728
Average monthly.....			306,675

"Your own estimate shows that the postmaster was under official obligation to collect postage on these excessive mailings, approximately in the amounts in which he did make collections, beginning with April, 1906.

"The statement accredited to the publisher that he carried subscriptions on his list six months with the expectation of securing renewals, and that the investigation disclosed that some of the subscriptions were carried six and two-fifths months and in some cases as long as eight months, due to the methods employed, appears absolutely inconsistent with the notices carried in his publication at the time of the investigation by the post-office inspectors and quoted below:

"*Discontinuances.*—Subscribers wishing the Woman's Magazine stopped at the expiration of their subscription need not notify us to that effect; we shall consider it their wish to have it discontinued if they do not renew promptly when notified that the time paid for has expired.

"If you find this paragraph marked it means that your time is out and that we will stop sending the magazine if not renewed within 30 days. We don't want to lose you, so please renew at once. If your paper comes in a blue wrapper it is also a notice to you that your subscription has expired."

"Beginning with the May, 1906, mailing of the June issue of the Woman's Magazine, the 30-day discontinuance rule was dropped and the following notice substituted:

"*Discontinuances.*—Subscribers wishing the Woman's Magazine discontinued need not notify us to that effect; we shall consider it their wish if they do not renew after having been notified that the time paid for has expired.

"If you find this paragraph marked it means that your advance payment is out and that we will stop sending the magazine if not renewed. We don't want to lose you so please renew at once. If your paper comes in a blue wrapper it is also a notice to you that your paid in advance time has expired."

"This statement of the publisher is also contradicted by Miss Eleanor Jones, who was a forewoman in charge of the addressing department of the Lewis Publishing Co. from May, 1902, to August, 1905, and who makes affidavit that expired subscriptions were withdrawn from the current files of the Woman's Magazine after three months, and were not thereafter used as current subscriptions or expired subscriptions, and that the publication was not thereafter mailed to such former subscribers except as sample copies not to exceed three times a year. Her affidavit also states that it was the custom to use blue wrappers upon copies sent to those whose subscriptions have expired, as long as their names were retained in the files. Miss Jones is of known reliability and standing, and her statement in this and other respects bearing on the methods employed by the publishing company are supported by those of her sister, Miss May Jones, and two other employees of the publisher, whose affidavits were taken. These affidavits are before me. Furthermore, when the inspectors and the postmaster made their count on October 13, 1905, they found the card records containing names of persons whose subscriptions had expired from three months to three years prior thereto, were secured by rubber bands, which were so rotten that when the bundles were opened the bands fell to the floor in pieces, indicating clearly that these records were not being used regularly for mailing

purposes, as claimed; while the current card files were wrapped with fresh rubber bands and indicated continued and regular use.

"The publisher's statement seems to be disproved by the fact that on October 20, seven days after the inspector's count, according to the postmaster's figures, there were mailed as to regular subscribers 579,125 copies of the November, 1905, issue in blue wrappers (indicating that the subscriptions had expired) which was within 2,000 of the number of current subscribers that you credit him with having. This in itself would condemn the publisher under the ruling quoted on page 10 of your report, for the reason that according to your figures he mailed with this issue 936,557 copies of the publication as sample copies and to persons whose subscriptions had expired, as against a current subscription list conceded by you for that month of 581,707; an excess of 354,850 copies sent 'free to the recipients thereof,' over those sent to subscribers and paid for."

Answering the foregoing I have to say that no explanation as to the percentage of replies favorable to the publisher would answer so well as the records themselves. A description of the tests made will be found in the report of the commission on the Woman's Magazine beginning at page 29, and in the report on the Woman's Farm Journal beginning at page 11. The tabulated results of the tests will be found in the exhibits referred to in the various descriptions thereof. These reports and their accompanying exhibits are submitted herewith for your information.

I did not look into or consider the tests made by the postmaster and do not know how he classified them. I was deciding an appeal of the publisher from the rulings of the postmaster, and I made my own tests according to regular practices. What the postmaster found or reported, or what the publisher or any other person said or did, had nothing to do with my decision on the facts.

Concerning the table on page 4 of my report, I have already stated that it was serviceable only as to totals. It is an estimate of the total number of copies mailed to subscribers and as samples, based on the receipts of the postmaster issued to the publisher. The number of copies given as "subscribers' copies" and the number of copies given as "samples" have nothing to do with the case; but the total mailings, as shown by the table, are of first importance since they must be justified by the number of subscribers found by actual count. The table on page 8 shows that the totals of the current and expired subscriptions were sufficient to justify the total mailings of the issues in question, as shown in the table on page 4. The question I decided was one of totals.

This also answers in part your inquiry as to what explanation can be given for regarding as actual subscribers persons to whom copies were sent so largely in excess of the number of subscriptions found by the commission. This question is fully answered in Exhibit 47. I do not say that the table on page 4 represented the facts as to subscribers' copies and sample copies, for the investigation showed that it did not.

My statement, which you quote from my report, was unfortunate in not being clear as to exactly what was intended. I should have said that the number of current subscriptions for all issues except October, 1905, and May, 1906, as found by the commission, was sufficient to account for the number of sample copies as estimated from the postmaster's record of weights; and I meant my statement to show that the current subscriptions for those two issues were not sufficient to carry the number of sample copies mailed according to the table on page 4. To have been clear as to my meaning the sentence should have read as follows: "Therefore, except for those issues the question of whether the publisher exceeded his privilege at the pound rate with respect to his mailings of sample copies so marked, as found from the postmaster's records, is easily disposed of; but that is not the question: It is one of total mailings." The entire statement might have been omitted from my report altogether, because it had no value as to the ultimate facts.

You are not quite right as to the statement referred to as "May" being intended for "April" in the tables. There was an omission of the figures for May, 1906, in the table showing the mailings, an oversight of the typewriter due to the hurry in which the decision was prepared. In order to supply this omission and to illustrate clearly what I failed to make you understand in my original report—that is, that the determination of the question of excess mailings is dependent solely upon the totals involved—I submit the tables again in complete form, with the subscription table extended to show the number of copies of each issue which the publisher was entitled to mail at the pound rate, allowing one sample copy for each subscriber's copy. I submit also a table

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showing the number of copies of each issue which the publisher was entitled to mail, the estimated number which he did mail, and the difference in his favor:

Number of subscriptions on the dates indicated, and the total number of copies mailable at the pound rate, based thereon, for the issues of the months following the respective dates.

Date.	Subscriptions.			Equal number samples.	Total copies mailable pound rate.
	Current.	Expirations.	Total.		
Oct. 13, 1905.....	578,346	214,483	792,829	792,829	1,585,658
Oct. 31, 1905.....	576,802	198,632	775,434	775,434	1,550,868
Nov. 30, 1905.....	581,707	187,589	769,296	769,296	1,538,592
Dec. 31, 1905.....	603,477	175,494	778,971	778,971	1,557,942
Jan. 31, 1906.....	577,771	196,584	774,355	774,355	1,548,710
Feb. 28, 1906.....	559,812	224,492	784,304	784,304	1,568,608
Mar. 31, 1906.....	529,717	277,011	806,728	806,728	1,613,456
Apr. 30, 1906.....	527,891	292,747	820,638	820,638	1,641,276

Estimated number of copies mailed at the pound rate, of the issues indicated, based upon the postmaster's record of weights.

	Copies.		
	Subscribers'.	Samples.	Total.
October, 1905.....	852,034	603,181	1,455,215
November, 1905.....	986,588	531,676	1,518,264
December, 1905.....	1,127,808	345,690	1,473,588
January, 1906.....	1,182,854	317,818	1,500,672
February, 1906.....	1,176,921	312,439	1,489,360
March, 1906.....	1,138,868	360,426	1,499,294
April, 1906.....	1,184,291	292,296	1,476,587
May, 1906.....	944,928	543,701	1,488,629

Number of copies the publisher was entitled to mail of the issues indicated, the estimated number which he did mail, and the additional number which he might have mailed without exceeding his privilege at the pound rate.

Issue.	Number of copies.		Additional copies mailable.
	Entitled to mail.	Actually mailed.	
October, 1905.....	1,585,658	1,455,215	130,443
November, 1905.....	1,550,868	1,518,264	32,604
December, 1905.....	1,538,592	1,473,588	65,004
January, 1906.....	1,557,942	1,500,672	57,270
February, 1906.....	1,548,710	1,489,360	59,350
March, 1906.....	1,568,608	1,499,294	69,314
April, 1906.....	1,613,456	1,476,587	136,869
May, 1906.....	1,641,276	1,488,629	152,647

I did not mean it to be understood that the totals of copies which the publisher was entitled to mail did not agree with the estimates made, in the way you have taken it. What I did mean was that the totals found by actual count did not agree with the estimates of mailings so far as subscribers' copies were concerned. Concerning the question of whether the publisher complied with the regulations as to marking sample copies I made no inquiry; nor did I make any inquiry as to whether he made up special sacks of samples or of any copies to go free within the country.

I must repeat that I found the facts as to the number of subscribers and the total number of copies mailed, and that allowing for each subscriber's copy one sample copy, whether marked or not marked, or whether such samples were put in separate packages or not, there were no excess mailings.

It was wholly immaterial to the appeal which I was given to decide, whether the publisher's published statement concerning discontinuances was inconsistent with what I found to be the facts. The question before me was one of fact, and I did not look into or consider whether the publisher was making statements inconsistent with the facts. Neither did I consider any testimony given by any person as to the publisher's practices. The question of whether the rubber bands used on the card records containing names of persons whose subscriptions had expired were rotten, had nothing to do with the case. Whether the statement of the publisher was disproved by the fact that on October 20, 1905, seven days after the inspectors' count, there were mailed as to regular subscribers 579,125 copies of the November issue in blue wrappers, had no weight in my decision. I have already disposed of the question of whether the blue wrappers could be taken as evidence. Neither did I consider whether the publisher was condemned under any ruling.

The following is quoted from your memorandum, beginning on page 14:

"On page 10 of your report it is said:

"No satisfactory basis for a calculation as to what percentage of the expired subscriptions were actually renewed was found. If renewals were made after the expiration of a period of eight months (some were carried even longer), the original evidence of subscription had by that time been destroyed and the renewals were counted as original subscriptions are counted. It turns out, then, that a person who had subscribed for one year and who had not renewed at the end of the year would be carried on the publisher's books as a subscriber for six months and possibly eight months. If he renewed within that time his subscription was dated to begin at the expiration of the old. If at the end of six or eight months he would fail to renew, six or eight copies, as the case might be, would have been sent him free. If he had renewed after eight months, which appears to have been true in some thousands of cases, the subscriber would be treated as new, no charge being made for the copies over and above the number due him on the previous subscription. This might happen over and over again with the same subscriber."

"In the thousands of cases referred to in the above statement, one of two conditions must have existed: either the person receiving the publication for eight months after his subscription had expired, was a subscriber or he was not a subscriber. If the latter, he was receiving the paper as a sample copy for eight months after his subscription had expired, and the publisher was violating the provisions of the regulation prohibiting the sending of sample copies more than three times a year to one person. Of course such copies should have been prepaid each with a 1-cent stamp. If the former, the publisher was furnishing the publication 20 months for 10 cents, which, under your ruling as given on page 21 of your report, was a nominal price. The effect of this practice was to reduce the annual subscription price in all such cases to 6 cents per annum. They could not, therefore, properly be regarded as legitimate subscriptions, and each copy so mailed to any such subscriber after the date of expiration of his subscription should have been prepaid with a 2-cent stamp.

"Considering further the question of nominal rates, it is observed that while in October, 1905, according to your statement, the publisher had 576,802 subscribers, he mailed for that month 1,455,215 copies. If, therefore, the advertised price of 10 cents per annum was received on each of his current subscriptions, the publisher obtained \$57,680.20 for copies going 12 times per annum to 1,455,215 persons, or at the rate of 3.9 cents per copy per annum for the copies mailed for that month. Why did this not reduce the subscription price to the nominal rate, and how can it be claimed that the issue of the publication for that month was entitled to transmission at the pound rate?

"It is observed that for the year ending December 31, 1905, according to page 14 of your report, the moneys received on account of subscriptions to the Woman's Magazine were \$50,100.04, while according to page 4 of that report the publisher was mailing an average of 1,482,355 copies of the publication monthly, thus reducing the annual subscription price on those mailed to approximately 3½ cents per copy per annum. Using these figures as a basis, it appears that while \$50,100 was received for subscriptions, the publisher was paying for postage at the pound rate over \$36,000 per annum, making his net receipts from subscriptions about \$14,000 per annum, while he mailed an average of one and one-half million copies monthly. His compensation, there-

fore, for each copy per annum was about nine-tenths of 1 cent. If this is not a nominal rate, it would appear to be impossible to find one."

Answering the foregoing I have to say that so far as my decision was concerned the table on page 8 of my report represented allowable subscriptions. I did not inquire or decide whether the publisher was violating the sample-copy privilege by sending copies more than three times to the same person in one year. If he did so, he was violating the regulation. The question before me was merely one of totals. Did the publisher exceed his privilege at the pound rate? The fact that expired subscriptions were carried for eight months or even longer can not be taken as a basis for determining whether or not there are excess copies mailed.

In determining whether or not there had been excess mailings I did not consider or decide as to whether or not the publication was sold at a nominal price. Consideration of that feature of the case is reserved for Section II of my report, in which I am to deal with the question as to whether the publication should be excluded from the second-class rates altogether on the ground, among other things, that it is sold at a nominal rate.

It may be stated, however, that the question of a nominal rate is the question of the rate to the subscriber. In other words, adopting the language of Circular XXV, it is a question of a fair exchange of value between the subscriber and the publisher. No other consideration can enter into it because, as it was pointed out again and again by publishers before the Postal Commission, if you are to consider the total cost of production, including postage and not postage alone, a copy of probably no publication costs the subscriber what it costs the publisher to produce it. Again, so long as a daily newspaper is permitted to sell a copy for a cent (which copy costs more than a cent to produce) it can not be held that a monthly publication, each copy of which costs the subscriber a cent (and which probably costs the publisher no more per copy than the daily paper) can be determined to be sold at a nominal rate. Not only this, but it is well known that there are established daily papers published in the United States which are sold to their subscribers at an annual charge of \$1, or less than one-third of a cent per copy. So long as 300 copies may be sold at the rate of one-third of a cent per copy in the course of a year, it is impossible to hold that 12 copies of a monthly publication may not be sold for the greater price of 10 cents a year. The law makes no distinction as to rates between daily, weekly, or other publications.

Perhaps we do not understand each other on the meaning of a nominal rate. I understand a nominal rate to mean a rate that puts the paper into the hands of the subscriber at a cost which is not real or substantial, but nominal to that subscriber. The rate is to be tested by what the subscriber contracts to get from the publisher. If the rate per year or per quarter which he contracts to pay is not nominal, the fact that the publisher sends him additional copies of the publication after the expiration of the subscription in the hope or for the purpose of inducing him to continue, it does not affect the contract rate at which the publication is issued. The test is, what the subscriber actually pays or agrees to pay to the publisher in consideration of his paper. I do not understand how you make out that the carrying of an expired subscription for a number of months brings into force the ruling on page 21 of my report as to nominal price. The rule applied in my report was to the case where the original subscription had been sold to the subscriber at less than the advertised price, and had no reference to whether, at the expiration of the term for which the subscription ran the publisher chose to carry the subscriber on credit; and there is no rule in existence which would justify the holding that copies sent to persons whose subscriptions had expired should be prepaid by a 1-cent stamp.

I quote the following from your memorandum, beginning on page 16:

"On page 11 of your report you say:

"There is no authority of law for holding that a subscription must be paid in advance, and no authority of law for holding that every subscription terminates at the expiration of the period for which it is written. It is upon this construction, existing since the passage of the act of March 3, 1879, that the carrying of expired subscriptions is permissible. Of course, no publisher secures a renewal of every subscription carried as a credit after expiration. That could not be expected. It is, however, reasonable to expect that a pub-

lisher should be able to show that he does secure a fair percentage of renewals from the persons he carries. He should, indeed, be able to show that at least two out of every three, and certainly as many as three out of every five actually renewed. If such a rule had been in existence and applied to this particular case, we should probably rule out a great percentage of the number of subscriptions carried as expirations.'

"You say there is no authority of law for holding that subscriptions must be paid in advance, and that every subscription terminates at the expiration of the period for which it is written; yet in the Official Postal Guide for January, 1905, on page 1041, it is said that 'subscribers within the meaning of the law' include those who 'voluntarily seek and pay for the publication with their own money.'

"How do you reach the conclusion that persons carried as subscribers six or eight months after the expiration of their subscriptions, and who have indicated no intention or desire whatever that the subscriptions be continued, and who, according to the publisher's advertised rule, will not be recognized as subscribers beyond 30 days after the expiration of their subscriptions, are legitimate subscribers? Is it fair or logical to place in the same class, and deal with alike, publishers who number their subscribers by the hundreds of thousands and who address themselves to the entire country, and publishers of country weeklies who are constantly in close touch with their patrons and have either personal acquaintance with them or accurate knowledge of their integrity and financial ability? In the case of the large publisher expired subscriptions are carried for the clear purpose of being used as the basis for the circulation of sample copies at the pound rate of postage. In the case of the country publisher there is no such purpose. In the present case the publisher has announced to all of his subscribers that if they wish the magazine stopped at the expiration of their subscription they need not give notice to that effect; that it will be considered their wish that the publication be discontinued if they do not renew promptly when notified that the time paid for has expired. They are further informed:

"If you find this paragraph marked, it means that your time is out, and that we will stop sending the magazine if not renewed within 30 days.'

"Is not the publisher to be bound by the rule which he himself has established and announced to all his subscribers? How can he be allowed to claim as subscribers persons whose subscriptions have expired for periods of six to eight months, when he had declared that they will not be recognized as subscribers after 30 days beyond the date of expiration of their subscriptions?

"Significant in this connection is the fact that after the inspectors' investigation, and when your commission took up their investigation at St. Louis in May, 1906, the publisher changed these standing notices; and in the June number eliminated the 30-day expiration rule, showing an acute change in his policy of treating expired subscriptions. I am informed that until the inspectors' count the publisher followed the 30-day rule and did not carry expired subscriptions as he now represents to you. He also, after this count, changed his system of mailing, which action, according to his own employee (Mr. Miller), was to confuse the post-office authorities who were trying to ascertain the extent of his legitimate subscription list. What motive can be assigned for this sudden change of policy other than that of covering up excessive mailings prior to the investigation by the postmaster and post-office inspectors in October, 1905, and to safeguard like irregular practices in the future against detection?

"In the case of the country weekly, on the contrary, the publisher accepts credit of the subscriber upon faith that he has ability and inclination to pay for the publication, and that he desires it to be continued. He would have no motive in sending the paper to a subscriber whose term had expired other than that of finally obtaining payment for the publication.

"In the case of the mail-order publisher only a small percentage of renewals are obtained from persons whose subscriptions have expired and who continue to be carried as subscribers; while with the country weekly practically all of such persons so carried renew their subscriptions.

"Should a publication of this kind, characterized by you as a mail-order publication, be classed with either the country press or with the large and established magazines which are desired for their literary merit, and which are sold for substantial prices at news stands, and generally mailed in bulk, only a small proportion being sent in single wrappers to individuals through the mails?

"On page 12 of your report you state:

"So far we have never had any ruling at all on this subject other than the one quoted from Circular XXV, and it is indefinite as to proportion and length of time, and so far as it goes has not yet been applied in a single case."

"The provision of the circular referred to is—

"Expiration subscriptions may be carried when necessary for a sufficient time to enable the publisher to ascertain whether it is the intention to renew. After the expiration of such reasonable time they will no longer be recognized as actual subscriptions, and in all cases the ration of expired subscriptions to the whole list, irrespective of time carried, will be considered and given weight in determining the legitimacy of lists of subscribers and the primary design of the publication."

"Do not Sections II and VIII of the syllabus prepared in your office on decision of the Supreme Court of the District of Columbia in the case of Conant v. Postmaster General apply to this case? The sections read as follows:

"II. Where a considerable portion of the persons listed as subscribers appear to be those whose subscriptions have expired; held, that such persons could not reasonably be counted as a part of the legitimate list of subscribers."

"VIII. While the statute does not put any express limitations upon the number of sample copies circulated, such copies must be samples in fact, and the publisher wishing to obtain the benefit of the section must show the utmost good faith, and not attempt to evade it by any device."

"According to your table the current subscriptions for November of 1905 were 581,707; the mailings that month to those whose subscriptions had expired were 404,881 copies, and in addition to this there were 531,676 samples so marked. Considering the large number of samples mailed that month, is not 404,881 copies a 'considerable portion,' within the meaning of Paragraph II of the above-mentioned syllabus? If so, should it not be held (as it was in the Conant case) that such persons could not reasonably be counted as a part of the legitimate list of subscribers?"

"Should not the lack of 'utmost good faith' on the part of this publisher, and his attempt to 'evade' by 'devices' the limitations upon the sample copy privilege, be applied to this particular case, as referred to in Paragraph VIII of the syllabus above quoted?"

"On page 20 on your report you quote a provision of Circular XXV as to rates and numbers of subscriptions, and state that ruling of Circular XXV to be applicable to this case. Why is one ruling of the circular applicable and not another? And what is the basis of your construction on page 10 of your report that the expired subscription ruling in Circular XXV does not go to the legitimacy of lists of subscribers as applied to excess mailings, as well as to the primary design of the publication? In this connection attention is called to the January, 1905, Postal Guide, page 1040, paragraph 7, which states:

"Under the act of March 3, 1879, a publication, to be admissible to the second class of mail matter, must, in addition to complying with the other requirements of the law, have a "legitimate list of subscribers." This list of subscribers must be legitimate in its entirety. And the sending of copies free to the recipients thereof to a number in excess of the number sent to actual subscribers will be taken as evidence that the primary or chief purpose of the publication is not to meet a real demand on the part of subscribers, but to secure a forced circulation, within the prohibition of the statute against publications "designed primarily for advertising purposes, or for free circulation, or for circulation at nominal rates."

"According to your own tables, it is shown that this publisher is sending free each month copies of the Woman's Magazine in the following numbers, in excess of those sent to actual subscribers:

	No. of copies.
October, 1905-----	852, 034
	775, 434
Excess -----	76, 600
November, 1905 -----	986, 588
	762, 296
Excess -----	224, 292

1090 EXPENDITURES IN THE POST OFFICE DEPARTMENT.

	No. of copies.
December, 1905.....	1, 127, 898
	778, 971
Excess	348, 927
January, 1906.....	1, 182, 854
	774, 355
Excess	408, 499
February, 1906.....	1, 176, 921
	784, 304
Excess	392, 617
March, 1906.....	1, 138, 868
	806, 728
Excess	332, 140
April, 1906.....	1, 184, 291
	820, 638
Excess	363, 653
Total excess.....	2, 146, 728

"making, according to your table, 2,146,728 copies of the Woman's Magazine which were mailed neither to subscribers nor as sample copies. It was evidently the duty of the postmaster, under the regulations, to collect advance postage on these copies at the rate of 1 cent a copy, which would amount to \$21,467.28. Waiving the provisions of Circular XXV, under what construction of this rule can it be held that these copies of the paper were entitled to admission to the mails at the pound rate? It is shown beyond controversy, and is admitted, that they were not sent either as current or expired subscriptions. Neither were they marked and sent as samples, as is required by the regulations. Is it possible that the publisher, by refusing to obey the regulations requiring sample copies to be so marked, can be permitted to send out any number of copies to persons who are not subscribers at the pound rate?

"Further, under what construction, as argued on page 10 of your report, can copies of the publication sent free in excess of the number sent to actual subscribers come within the prohibition of the statute, as applied to the question of primary design of the publication, and yet not come within such prohibition as applied to a question of excess mailings? Attention is called to your conclusion on page 14—

"But it is not clear that the income from subscriptions, both new and renewals, indicates a percentage of renewals great enough to warrant the carrying of such a proportion of expirations."

"and also to the fact that, while from December, 1905, to April, 1906, both inclusive, copies mailed by him to persons whose subscriptions had expired, according to your table on page 8, gradually increased from 175,494 to 292,747, yet the current subscriptions decreased from 603,477 to 527,891.

"Under what construction do you hold that there is no reduction from the nominal price in a case where the publication, as in this instance, is sent in many thousands of cases free for 8 months after the subscription term has expired, or a total of 20 months for the annual subscription price of 10 cents, or at the rate of 6 cents per annum, while holding that there is a reduction from the nominal price, when under a clubbing arrangement the publication is sent at the price of 6 cents per annum or less, as indicated on pages 21 and 28 of your report?

"The table on page 8 of your report shows the publisher to be entitled, in your judgment, to carry expired subscriptions for the month of December, 1905, to the number of 175,494, and his current subscriptions for that month to be 603,477. That table also shows that, in your opinion, the publisher was entitled to carry for the month of April, 1906, expired subscriptions to the number of 292,747, and that his current subscriptions were 527,891. Thus it is indi-

cated that the current subscriptions to the publication for the month of April were 75,586 less in number than those for the month of December preceding; but you have allowed as legitimate for the latter month 117,253 more expired subscriptions to the publication than you have allowed for the former. The claiming by the publisher of this additional number of expired subscriptions seems to admit of but one interpretation, viz, that he requires that number to free himself from the charge of mailing in April more copies than he was legally entitled to mail. But how do you reach the conclusion that such claim is proper and that the publisher should have the benefit of what seems to be a mere subterfuge?

"Why, for the month of October, 1905, is this publisher granted such extended expiration privileges to either magazine; when, according to the statement of his ex-employees, the inspectors, the postmaster, and his 50 clerks, who made the count October 13, 1905, he was not using his expired subscriptions regularly to exceed four months in the case of the Woman's Farm Journal, or to exceed three months in the case of the Woman's Magazine? If, as stated by you on page 12, the necessity of a rule fixing definitely the proportion of expired subscriptions which may be carried and the time for which they may be carried has frequently been felt, why has not such a rule been made? And if, as you state on page 15 of your report, the publisher of the Woman's Magazine is violating the spirit of the second-class privilege, why is not such a rule now applied?"

I feel satisfied that your first question in the above quotation arises from a misconception of the whole second-class problem; it is certainly due to a misconception of what I decided in my report. That report was complete upon the one question of excess mailings under the ordinary, everyday practice of publishers, and the ordinary, everyday practice of the department in dealing with the second-class problem.

The term "voluntarily seek and pay for the publication with their own money," which you quote, does not apply at all. I allowed certain subscriptions to be carried after expiration, but I did not decide, as you seem to think, that persons whose subscriptions are so carried are "legitimate subscribers." The statute does not require "legitimate" subscribers, but it does require a "legitimate list of subscribers." A legitimate subscriber and a legitimate list of subscribers are different matters. What I decided was, that under existing rules and practices there were no excess mailings. I found and reported a great volume of expired subscriptions, and that they were carried for a long period, and I endeavored to show that there was no rule under which we could in this case, standing by itself, decide that there was an excess mailing, upon the ground that the expired subscriptions were too many or too long carried, or both, and I gave my reasons for that conclusion.

I did not consider or decide whether it is fair or legitimate to deal with publications like the Woman's Magazine under the same rules that we deal with publications like country weeklies. I indicated plainly that I regarded the second-class privilege abused by the carrying of such a volume of expired subscriptions and for such length of time; but that, in view of the publisher's repeated statements that he would abide by any rule of the department, once known to him, and in view of our common practice from day to day, and our promise to Messrs. Bromwell and Weinschenk to publish all rules and give notice of their taking effect, we could not now, in justice, make a rule for this case alone; and even if we did, we are bound in common decency to give notice and allow the publisher some time to adjust his business accordingly.

I did not consider or decide whether the expired subscriptions were being carried for the purpose of forming a basis for the circulation of sample copies at the pound rate, or whether the publisher fulfilled or did not fulfill his announcement to his subscribers concerning the stopping of the magazine at the expiration of subscription. That question was immaterial to the issue which I was to decide.

I did not consider or decide whether the publisher was bound by the rule which he himself published, because it was immaterial and was none of my business. Whether the volume of expired subscriptions and the length of time carried violates the whole list and makes it illegitimate has not been decided. That question is to be dealt with in Section II.

I did not consider or attempt to assign a motive for the change in the policy and practice of the publisher in the matter of carrying expired subscriptions, as announced in the publication. It may be that this sudden change of practice was for the purpose of covering up the extent of his mailings prior to the

investigation by the postmaster and the post-office inspectors in October, 1905. Such a matter is wholly immaterial to the question of excess mailings of the issue covered by my investigation.

We have no authority for making rules regarding the circulation of mail-order publications different from those made for all other publications. Practically all of our great magazines are mail-order publications; but the mail-order publication, as such, is not recognized by law, and so far as a legitimate list of subscribers is concerned the law requires the same of all. We do not in general practice consider mail-order publications in the same light and under exactly the same interpretation as we apply to the established magazines or to the country press. That should be clear by what has gone before in this document (see, for instance, p. 52), but I do say that whatever rules are adopted for dealing with any class of publications should be published and due notice given as to when they will be in effect, in accord with the policy outlined in the Bromwell-Weinschenk letter.

Sections II and VIII of the syllabus in the case of William Cooper Conant v. The Postmaster General do not apply to this case. There the question was on the legitimacy of the list as a whole. This question is one of excess mailings. The syllabus contains no rule of limitation upon credits (expirations) which would enable us to decide whether the rule had or had not been violated by this publisher by the volume of or the length of time he carried expired subscriptions. If the number of expired subscriptions be a "considerable portion" of the list it is evidence on the side that the list as a whole is not legitimate within the intent and purpose of the law; that is what the syllabus means.

The "utmost good faith" mentioned had nothing to do with the question of excess mailings. As stated before, that was a mathematical question, purely. It may be that on a question whether the list of subscribers is legitimate as a whole, the matter of good faith would have weight.

It is not true that the rules in Circular XXV, applicable and in effect, were not applied to this case. All the rules in the circular except the "paid-for-by-others" rule (the stock-journal case) were applicable and were applied. The rule in Circular XXV as it applied to the kind of subscribers in the stock-journal case and others of that kind had been suspended. That made it impossible to apply the rule in other cases where the same principle is involved.

I can not state more plainly that I have repeatedly stated already that Circular XXV contains no rule of limitation as to number of expired subscriptions or time carried which we could apply to this particular case in order to decide the question of excess mailings. We would not be justified in saying that the publisher could carry no expired subscriptions, because that would be applying a rule to him that had never been applied before, and could not legally be applied to any publisher. Nor could we say that this particular publisher might carry expired subscriptions one, two, or three months, and only in a certain proportion to the whole list, because to make such a rule for one is to make it for all. If there had been such a rule in existence, and known to the publishing world, we might have applied it to this case to determine whether or not there were excess mailings; but having none, we can not invent one for this case alone.

The rule you quote from the January, 1905, Postal Guide touches the question of the legitimacy of a subscription list as a whole, and not excess mailings. Your quoting it leads me to the belief that you have not clearly in mind the difference between the questions: First, whether the advertised price of a publication is itself nominal; and, second, whether a reduction or rebate to the subscriber makes it nominal, regardless of what it may be advertised to be. The question of whether the rate is nominal is a question of whether it is nominal to the subscriber.

Concerning the table on page 21 of your memorandum, above quoted, nothing more need be said than has already been said—that there were no excess mailings, if we allow the expirations to be counted as subscriptions; and we have no rule as to expired subscriptions applicable to the case upon which the question of excess mailings could be determined. I do not understand what you mean when you say, "It is shown beyond controversy, and is admitted, that they were not sent either as current or expired subscriptions."

I have already explained a number of times that the question of the primary design of the publication has not been decided, and that that question had nothing to do with the question of excess mailings, which was a numerical one—a question of totals.

The extension of credit by a publisher to a subscriber after the expiration of a subscription has nothing to do with the question of whether the sub-

scription price which has been paid, or which will be paid if there be a renewal, is nominal. Expired subscriptions are carried on the theory that all may be renewed, although in practice it is found that only a certain percentage renew. The difference between allowing expired subscriptions and disallowing those secured through clubbing arrangements, whereby the publication is sold to the subscriber at a reduction from the advertised price, is very plain. You do not appear to discriminate between the price paid by the subscriber and the amount received by the publisher after allowing compensation to the agent. It is not a question of what the publisher gets for his publication, but a question of what the subscriber pays. I ruled out all subscriptions given as premiums with the purchase of articles or merchandise, or in clubbing arrangements where the publication was sold to the subscriber at less than the advertised price.

The variation in the number of expired subscriptions in the different months covered by the investigation is the result of a great variation in the number of subscriptions received in different months. The method of ascertaining the number of expired subscriptions carried on given dates is explained in detail in the commission's report, beginning on page 9, and in the exhibits therein referred to. I found the facts as to current and expired subscriptions and as to total mailings; but as to whether the publisher designed to make the expired subscriptions of greater volume one month than another for the purpose of justifying the total mailings was not looked into. It was all a question of fact, namely, what number of subscribers were there at the precise time the mailings took place, and what number of expirations were being carried at that time, and what was the total number of copies mailed at the time. I found the facts and so reported. If the number of current subscriptions at any mailing and the number of expired subscriptions carried at the time of that mailing taken together were less than half the number of the total mailings, the publisher exceeded his privilege; but it was not so found. Possibly the publisher was guilty of subterfuge, but I did not inquire into that matter, because it would make no difference.

Under my ruling expired subscriptions were allowed only because there was no rule of definite limitation in existence that could be applied to the case for the purpose of determining whether or not there was an excess mailing. I could not justly invent a rule of definite limitation applicable to this case alone in order to determine whether there was or was not an excess mailing. The statements of ex-employees, of inspectors, of the postmaster, of the publisher, or of others concerning the count made October 13, 1905, were not considered by me. The duty cast upon me was to determine whether or not there was an excess mailing with certain issues. In deciding I applied the uniform practice of this bureau in dealing with the second-class problem. The investigating commission found from the orders of subscribers themselves and other tangible records the indisputable facts as to subscriptions, and the statement of no person whatever was given weight. In my decision I considered only the facts as found.

The reason why a definite rule fixing the proportion of expired subscriptions to the whole list which may be carried and the time which they may be carried has not been made is because we have not reached that stage in our reform work where the action would be warranted. We can not do all things at once. The situation in the publishing industry has for some time been very delicate. We are not executing a new law, but we are endeavoring to get back to the principles and intent and purpose of an old law the administration of which has for long years been neglected by the department.

Another reason why we have never made such a rule is because there has always been serious doubt whether, in its application, we would be sustained by the courts; and it has always been deemed better, in proceeding against what are believed to be abuses of the second-class privilege, to follow a course which has already received judicial approval than to risk the success of the reform by having a doubtful ruling brought to test.

The following is quoted from your memorandum, beginning on page 24:

"On page 20 you say: 'I hold that the publisher of any publication sold as low as 10 cents a year is not entitled to make any reduction whatever in the price to subscribers by any process whatever, directly or indirectly. I deem it proper to enforce such a ruling in this instance and, therefore, reject all those subscriptions where the alleged subscribers paid less than the advertised price on the ground that they do not constitute actual subscriptions.' How, then, can you hold that persons whose subscriptions have expired and whose names are

carried for 8 months thereafter and when upon renewing subscription receive the publication at the fixed price of 10 cents from and after the date of the renewal, are legitimate subscribers? Is not the total term for which the publication is thus received by such persons at the price of 10 cents for 20 months? In other words, the publication is paid for for 12 months, and at the end of that time the publisher continues to send it for 8 months longer without charge. Does not the publication thus go to the subscriber whose subscription has expired for 8 months at the rate of 6 cents per annum? And do you not hold any subscription rate below 10 cents per annum to be nominal? You say, moreover, that the proceedings outlined occur over and over again, and it is clear that each repetition reduces still further the annual subscription rate. The effect, of course, is precisely the same whether the subscription is renewed or not after 8 months from expiration."

I did not hold, as you seem to think, that persons whose subscriptions had expired and whose names were carried 8 months thereafter and who, renewing their subscriptions after that period, would receive the publication for 20 months for the first 10 cents, were "legitimate subscribers." The law does not require "legitimate subscribers;" it requires a "legitimate list of subscribers."

No, I have not held that any subscription rate below 10 cents per annum is nominal. What I held was that where the advertised price was fixed by the publisher as low as 10 cents any reduction from that price to the subscriber by rebate or otherwise rendered that subscription at a nominal rate and, therefore, not an actual subscription; and as many of such alleged subscriptions as were found were ruled out in my report. That ruling is in perfect consonance with the provisions of Circular XXV.

I quote the following from your memorandum, beginning on page 25:

"On page 16 of your report you state: 'During this publisher's trouble with the postmaster at St. Louis a considerable sentiment in his behalf was created throughout the country. Many people seemed to believe that he was being abused or ill-treated, and some, as a measure of assistance to him, paid for copies of the Woman's Magazine to be sent to third persons, which the publisher himself should select. Large numbers of copies were sent out under this arrangement, but it was only a temporary condition and applied to only occasional issues. Under the rules of Circular XXV, if in force, the great bulk of the alleged subscriptions paid for in this way would not be acceptable at the pound rate. They would not be subject to the transient rate of 1 cent for each 4 ounces or fraction. That rule, as you will recall, has been set aside in the case of the stock journals, which are by far the worst offenders in this regard in the country. Their practices are one of the worst abuses of the second-class privilege. The circumstance that we suspended this rule in the case of the stock journals makes it impossible in fairness to now apply the rule to the Woman's Magazine, especially so because in that case it was but a small fraction of the whole circulation to subscribers, while in the case of the stock journals it constitutes the bulk of their circulation and is the basis of their so-called legitimate list of subscribers. With them the practice is permanent and continuous in the face of their knowledge of the department's ruling, while so far as we know this publisher is ignorant of the ruling. Another reason why it would be unfair to enforce this ruling in this instance is that recently when the ruling was brought to judicial test in the case of the Iowa Homestead and the department was sustained by the courts, we refunded to the publisher the 4 ounce rate and permitted the copies paid for by others to be mailed at a cent a pound to the end of the publisher's contact with the persons interested in the circulation of the paper for business reasons.'

"On what information is your statement based that for reasons of sympathy with this publisher, because of his 'trouble' with the postmaster at St. Louis, many people, as a measure of assistance to him, paid for copies of the Woman's Magazine to be sent to third persons, whom the publisher himself should select, and that under this arrangement large numbers of copies were mailed, but that it was only a temporary condition and applied only to occasional issues?"

"My information is that the 'trouble' of the publisher with the postmaster at St. Louis did not begin until October 11, 1905. The publisher, however, has declared in a letter dated November 20, 1905, that as early as the previous June he had mailed 48,544 copies of the Woman's Magazine to persons whose subscriptions were paid for from a special fund of \$10,000 provided by his friends and sympathizers, and that the names of such persons had been selected by him at his discretion. In the same letter the publisher stated that he sent in a

similar fashion 92,100 copies of this publication for July, 60,000 copies for August, and 85,147 copies for September. The publisher has failed to substantiate his statements as to the existence of any such fund or that any such contributions have been made; nevertheless his claim is that there was such a fund, and the effect of his statements is that it was in existence prior to the time when his trouble with the postmaster began. Have you any information as to the amount of such contributions and by whom they were made? If so, please furnish it.

"On page 17 you state that these paid-for-by-others subscriptions, which you state were sent out in large numbers, would not be acceptable at the pound rate under the rules of Circular XXV if in force. That circular, which was issued December 16, 1905, was sent to the postmasters at St. Louis and other cities with instructions to notify publishers and to make it effective April 1, 1906. The postmaster so notified this publisher in the latter part of December, 1905, and on April 6 took action under such instructions by charging the transient second-class postage on such excess mailings.

"Among the instructions as to examination of second-class matter on page 1036 of the January, 1906, Postal Guide, of which the postmaster was obliged to take cognizance, is the following: 'Postmasters are reminded that under the law (sec. 373, P. L. & R.), they are liable on their official bonds for loss of revenue due to faulty administration or neglect.'

"In addition to this, your letter of April 6, 1906, to the postmaster at St. Louis, in answer to an inquiry as to whether he should take action on the April, 1906, mailings of this publication, states: 'Inasmuch, however, as it is the duty of the postmaster to charge the lawful rate on matter passing through his hands it would be your duty, whenever the facts before you justify you in holding that the copies are in fact excess copies, to charge upon such excess the rate I have already mentioned, namely, the transient second-class rate.'

"Why was the action of the postmaster not proper and why should not the money collected by him be retained when he acted directly under your instructions? Have you at any time notified the postmasters of the country that the provisions of Circular XXV were suspended or revoked?

"Apropos of the statement of this publisher that 'he had sought to observe every known rule and limitation of the Post Office Department in the conduct of his business, and if it were found that any practice or method of his was in conflict with the rules, he would immediately amend the same, for he stood ready to meet all requirements as soon as he could find out what those requirements were,' your attention is directed to the following statement taken from a letter written by F. J. Cabot, the secretary of the company, to one of its employees: 'In other words, the less they (Post Office Department) know of our business, the better. I have nothing to hide, but I'll be d---d if I want them to run our business or even know what we are doing.'

"The refunding of the 4-ounce rate to the publisher of the Iowa Homestead, referred to by you on page 17 of your report, was recommended by you, and the memorandum signed by me, now in the case, was prepared in your office and submitted to me by you with your recommendation that I approve it. The circumstances in that case were peculiar to that publication, and it was solely by reason of those special circumstances, as stated in the memorandum, that the course recommended by you was pursued. It is shown by your report that the position taken by the department in that case, namely, that subscriptions paid for by others were not legitimate, was sustained by the courts. This being true, why is the department not warranted in making the most of that decision and treating as illegitimate such subscriptions in this case in respect of which you state your belief 'that the publisher of the Woman's Magazine is violating the spirit of the second-class privilege,' etc.?

"That other publishers are abusing the second-class privilege is of no relevancy in the consideration of this case. In the two instances you have cited, in which, as a matter of fact, there has been as yet no such thorough investigation as has been made in this case, action was merely suspended pending a report of the postal commission, with the distinct instruction conveyed by me that if no legislation was enacted by Congress the cases should be taken up for disposition under our present statutes. When you have sufficient information that other publishers are guilty of such flagrant abuses, then your duty will be plain; you should promptly take up such cases and deal with them according to the law and the facts. Neither is it proper that in deciding this case you should take into view the question of expediency or policy. Your decision in this matter should be based exclusively upon the law under which you are proceeding and

the evidence before you. Nor is it important whether the investigation was instituted upon your motion or at the instance of the Postmaster General or some other officer of the Post Office Department; the abuses must be corrected whether discovered by officers of your bureau or those of other bureaus of the Post Office Department. Your instructions were to take this case under consideration, examine all the evidence available, and to base your decision solely upon the law and the evidence.

"You notified me when this case was submitted to you that you expected shortly to take up the consideration of this class of periodicals. Why is not your investigation in this case, which you say on page 18 of your report 'is unusual in that so far as known never before have any publisher's business methods been subjected to such a raking scrutiny,' properly the beginning of such scrutiny of such periodicals? As you say, on page 19 of your report, 'the wisdom of singling out one or two publications to be dealt with in advance of being ready administratively to handle the class as a whole, may well be doubted,' and its unwisdom as a general proposition was fully realized by me when the case was turned over to you. There can be, however, no question as to my duty and yours in dealing with practices which are illegitimate when found in any class of publications, to which existing law and regulations properly apply. This aspect of the case was fully understood, and my desires concerning it clearly stated in repeated conferences with you regarding the case. According to your own figures, it is not necessary to deal with the abuses peculiar to any particular class of publications to find in this case practices which when disclosed in the business of any publisher call for departmental action."

My statement that there was sympathy for the publisher is based upon the record. I have already submitted to you Exhibit 41, which contains the record. It was sent you under date of February 25. This exhibit also contains evidence that persons paid for copies of the Woman's Magazine to be sent to others than themselves. The statement that it was only a temporary condition was based upon the fact that no such alleged subscriptions were among the current or expired subscriptions found by the investigation commission. The mailing of such copies had ceased, so far as we could ascertain.

I do not know the date when the trouble of the publisher with the postmaster at St. Louis began. The publisher has had two hearings before this office, June 17, 1905, and April 30, 1906. They are referred to in the previous part of this correspondence. The publisher seemed to feel that his trouble began as long ago as the first hearing. Whether he is right or not has nothing to do with the question before me. Nor did the question of the size of the special fund, which you state was \$10,000, have anything to do with the case. I merely mention the circumstance.

Concerning your statement that the publisher failed to substantiate his statements as to the existence of any such fund, or that any contributions had been made for the purpose claimed, I think the answer in Exhibits 37 and 41, which I sent you, and which show that, as a matter of fact, there was such a fund, amounting to \$8,250, according to the publisher's books, is complete.

The postmaster was right in demanding under the rules the transient second-class rate on excess mailings if he had conclusive evidence that there were excess mailings, or if he was not satisfied from evidence submitted by the publisher that he was entitled under the rules to mail as many copies as he offered, but he can not lawfully hold up a citizen's mail upon a mere guess. The amount which the publisher was required to deposit to cover postage upon copies alleged to be in excess, mailed with the April, 1906, and succeeding issues, was based upon a count of only the current subscription cards in the files of the publisher several months previous; that is, on October 13, 1905. Manifestly the conditions existing on that date were not conclusive evidence that there were excessive mailings with issues upon which the excess postage was demanded several months subsequently thereto.

If the postmaster had been acting under instructions of this bureau in the ordinary course of business in dealing with publications like the Woman's Magazine, I have already shown that the question of excess mailings would not have been raised, but the broader question of the right to second-class entry at all would have been the issue. However, the case had come to that state when it was turned over to me that the question of whether there were or were not excess mailings, regardless of the type of publication and regardless of the practice in that regard, had to be settled upon the principle which governed my decision. I found and reported that, as a matter of fact, there

excess mailings. The reason that I stated that the "paid-for-by-

others" subscriptions were not entitled to the pound rate under the rules of Circular XXV, if in force, was because it is held in practice that copies of the publication so sent are not sent by the publisher in response to subscriptions sent to him by the recipients of the copies; they are sent at the instance of others interested in the circulation of the publication for some reason or another; and, therefore, as in the *Stock Journal* cases, they are not sent by the publisher as to subscribers within the meaning of the law, and the publisher can not confer upon others acting through him the right to the pound rate. When acting for such purchasers it is held that the publisher must pay the rate which the buyers of the copies would have to pay if the copies were mailed by them, namely, the transient rate. This is the *Stock Journal* question over again. The pound rate is only for publishers and news agents.

The copies might have been sent in bulk at the pound rate to the persons who paid for them, but the publisher could not mail the copies for those persons to the individual addressees named by them or selected for them by himself. Circular XXV having been suspended in this very particular, and the copies in question having been mailed in the past, the transaction not being current, we could do nothing.

The reason why the postmaster should not retain the money now held by him on alleged excess copies is because, as a matter of fact, there were no excess copies mailed. If he took deposits under instructions from this office, then it was upon his assumption that there were excess copies mailed. An impartial investigation and treatment of the case, under the usual practices of this bureau, prove this to be not true.

The statement of Mr. F. J. Cabot, the secretary of the company, was not material to any question before me. I found the facts.

You state that the refunding of the 4-ounce rate to the publisher of the *Iowa Homestead* was recommended by me. That is true, but I recommended it because of the conditions. The following is the exact language of my memorandum of June 14, 1906, in which the recommendation was made:

"The question involved in this case, as in the *stock journal* cases, is whether the department should permit to be counted as forming, in whole or in part, the 'legitimate list of subscribers' copies ordered and paid for in large quantities by persons desiring to circulate the paper for reasons of their own, which copies are mailed by the publisher to persons designated by such purchasers without orders from the parties addressed. In the *Homestead* case so-called subscribers of this character formed but a small part of the whole list. This part of the circulation the department held to be subject to the transient second-class rate in the same manner as if copies had been sent directly from the bulk purchaser to the addressee.

"In the *stock journal* cases substantially the entire subscription list is made up of these bulk orders. The effect of applying the principle sustained in the *Homestead* case would be to rule these latter publications out of the second class, for they have substantially no other list of subscribers upon which to base a claim to the privilege.

"The practice common, both to the *Homestead* case and the *stock journal*, is a trafficking in the special privilege accorded the publisher to enable him to respond to a public demand from actual subscribers, for the maintenance of which privilege the public is taxed. Under the practice referred to the publisher sublets, so to speak, his second-class rates to third parties, who, acting on their own account, would be entitled to no such privilege.

"Having in mind that the principle governing both classes of publications is the same, the equitable and proper course in dealing with the *Homestead* deposit would seem to be to cover the money into the Treasury, if similar cases were to be dealt with in the same manner. The *Homestead* case, having been expressly ruled upon, and the postmaster being actually in possession of the money deposited at the higher rate, the department is in a position fully to enforce the principle it contends for. It would be no objection to such enforcement to say that other publications, indulging in the same practice, had not yet been dealt with, because obviously all publications could not be dealt with as of one date. All that could reasonably be asked is that the department should be proceeding with due diligence so to deal with them. If, however, a whole class of publications, such as the *stock journals*, guilty of greater infractions of this principle than the *Homestead*, are to be unmolested for a definite period, or until the happening of some definite event, such as the appointment and report of a commission, then it seems to me that it would be unequal, and therefore inequitable to insist upon a full payment by the *Home-*

stead Co. because of the circumstance that its case happened to be dealt with at an earlier stage, and was judicially sustained, and because the department is physically able to lay its hands upon the money."

As showing the consistency of the dealings of this office in similar cases, I herewith submit a copy of the memorandum addressed to you under date of July 10, 1906, where the same question, with some slightly different shading, arose in the case of *The Pacific Churchman*:

"Referring to our several conferences on the subject of illegitimate lists of subscribers—that is to say, lists made up in a more or less degree of alleged subscriptions paid for by third parties for advertising purposes, etc.—there comes to me, in due course, this morning from the Division of Classification a ruling on the case of *The Pacific Churchman*. It is made under the provisions of Circular XXV, exceptions to which have just been made as to the bulk subscriptions by commission merchants to stock journals for third persons, and in the 'Iowa Homestead' case, and as to 'political' subscriptions.

"Scarcely any two questions of this character are identical. This one varies in that just one person, namely, the bishop of the diocese is to pay for the entire bulk of the subscriptions. In the other cases the so-called subscriptions are paid for by a number of commission merchants, or by several campaign committees, or candidates for office, etc. This case involves the same principle and it has in addition the merit of not being for a commercial purpose. The copies to be sent as to subscribers will not further private business or political interests. There is, too, a sort of public character to the information sought to be distributed, and it would seem that the proposition is entitled to indulgence on the score of sound morals as long as we indulge the others.

"With your approval I will reverse the ruling of the Division of Classification and authorize the mailing of the copies of *The Pacific Churchman*, paid for by the bishop of the diocese, as if sent to actual subscribers. I shall base the reversal on the ground of analogy to the Iowa Homestead, the stock journal and political subscriptions decisions, and that there is a consideration favorable to this proposition, in that it is not for the advancement of private interests. I shall also base the reversal on the ground that Congress has authorized a commission to consider and report upon the whole subject of second-class mail matter.

"I know the danger of such a ruling in dealing with the flood of similar questions which is sure to follow, but we can not be unfair or unjust. To rule otherwise would be to make fish of one and flesh of another in an offensive way."

You approved the foregoing recommendation, and action was taken accordingly.

All of this irregularity, you will note, grows out of the fact paid-for-by-others subscriptions were allowed to stock journals, and that we could not in good morals deny a privilege to other publications which once suspended as to stock journals had been restored to them.

The action of the court in sustaining the department in the rulings on the Homestead case should have been followed by the covering of the deposits of the publisher into the Treasury instead of returning them to him, and the applying of a like ruling to all similar cases throughout the country; but the suspension of the provisions in favor of stock journals and political subscriptions, as shown by the memorandum, rendered such action inconsistent, unfair, and immoral.

You say that the fact that other publishers are abusing the second-class privilege is of no relevancy in this case. I do not understand what you mean by that. It can not be that you mean that one publication should be singled out of a class and dealt with in some extraordinary way out of accord with the general policy and practice as to the class in which it belongs? I did not, however, decide whether or not the *Woman's Magazine* is an abuse. I did say that I thought the publisher was abusing his privilege as to carrying expired subscriptions, but the abuse of the publication and its mailings as a whole and an abuse in the practice of carrying expired subscriptions, are two different matters. You are correct as to no such thorough investigation having ever been made in any case as in the *Woman's Magazine*. I have already shown in this communication that we never dealt with any case before as we have with this one. (See pp. 70 and 78.) The suspension of the progress of the reform work of which you speak, pending the ascertainment of whether there would be any legislation by Congress on the subject of the second class of mail matter has only just been lifted. Your letter is dated February 12. My report on the excess question was submitted to you on February 5.

You say that when I have sufficient information that other publishers are guilty of such flagrant abuses my duty will be plain. I do not quite understand you. I do not know whether you refer to the abuse of carrying expired subscriptions in too great a proportion and too long, or whether your statement is as to the publication as a whole. We now know that there are many abuses in the mail-order type of publications, as that term is generally understood, much more flagrant than in the case of *The Woman's Magazine*, but I have not reported that it (*The Woman's Magazine*) is or is not an abuse, taking the business as a whole.

You say that I should take cases up promptly and deal with them according to the law and the facts. You can not possibly conceive of the volume of business transacted in this bureau from day to day, and what the effect of such disorderly work would be, and how the singling out in that way of a publication here and there, in one or another class, and dealing with it alone of its class, would bring down upon us such a protest against its unfairness that the public condemnation of our work would soon put a stop to it. We can hope to succeed in this reform work only while we are considerate of the morals and equities of the situation, and are careful to be not only within the law, but to be following a course which will appeal to the public as fair.

You, no doubt, have the power to direct any course of procedure; but you never before indicated that you desired such a radical change in the policy which has all along characterized the work of this bureau in dealing with this problem. If the second class were not literally infested with abuses as it is, and there existed only one here and there, we should, of course, take them up as we found them and deal with them regardless of the class in which the abuse was found. But these practices are of long years standing, and the publishers, by reason of noninterference on the part of the department, are justified in believing that they are not abuses at all; and the department has declared, and has followed all along, the practice of giving notice of changes of rules concerning the application of the law under the reform. The only way that we can successfully handle this work at all is by dealing with publications in classes, working through one at a time, taking the more flagrant class first, and the more flagrant abuse in that class first, as nearly as we can locate them. You do not seem to appreciate that this reform work is a revolution and not an orderly procedure of administering a law from the beginning. The department itself is not clean.

You say, is it not proper in deciding this case that I should take into view the question of expediency or policy. If that be true I must have entirely misconceived the purport of the Bromwell-Weinschenk letter and the whole policy of the reform work so far as it has been conducted since 1901. In dealing with the cases as they come up in the course of business, I do base my decisions upon the law and the evidence before me.

You say that it is not important whether the investigation was instituted upon my motion or at the instance of the Postmaster General or some other officer of the Post Office Department. My answer is that I am entirely subservient to the Postmaster General, and if he had directed me to take up this case and decide it upon the law and the facts by itself, irrespective of the policy and practice, I should have done so. The question before me was one of excess mailings, and I have not yet reported upon the question of whether the publication as a whole is lawfully enjoying the second-class mailing privilege.

What I meant in my report was that the investigation, as conducted in this particular case, was the reverse of the practice of this bureau in dealing with such cases, and that I had to make the best of the situation when it came to me, applying as far as I could rules which prevail in this bureau. That is in accordance with what I understood your verbal instructions to be. You said "lean backward." I understood that to mean to lean backward in the endeavor to be fair. I did not understand it to mean to lean backward to be unfair, as would have been true had I not dealt with the case under exactly the rules which I have applied in deciding the question of excess mailings.

You say that my instructions were to take this case up for consideration, examine all the evidence available, and to base my decision solely upon the law and the evidence. I received no such instructions. I hope you will reread your letter of April 14, 1906, herein quoted. (See p. 30). In addition to that letter, the only instructions given the matter concerning the treatment of the case were, as I have already stated, to "lean backward."

I can not understand why the case was turned over to me at all as it was by your letter of April 14, 1906, if it was not for the purpose of giving it treatment

In accordance with the rules in daily practice in the bureau of the Third Assistant Postmaster General so far as they might be applied. The case had long been handled independently of the Third Assistant Postmaster General, and why might it not have been completed without him? Your memorandum indicates that you are satisfied that the publication is an abuse, and that there have been excess mailings. You have the power to decide for yourself, as you have the power to overrule my decision upon a review of all the evidence relevant and material. I did not conceive of the case being turned over to me to proceed other than in the ordinary way under the practices of this bureau as far as they could be applied. The unusual course followed prior to the case being turned over to the Third Assistant Postmaster General made it necessary, in order for me to determine the issue as drawn, to appoint a commission to examine every individual subscription order and all the other evidence affecting the subscriptions.

If we were at work correcting the abuses in the class of periodicals to which the Woman's Magazine belongs, we would take up first the more flagrant cases, but we would not undertake to handle any case as the Woman's Magazine has been handled. We are not equipped for it. I have explained this in citing the treatment of this bureau in the case of the Journal of Agriculture, published by this same publisher. (See p. 77.)

I spoke of the raking scrutiny given this publisher's business by this bureau, because never before had such an investigation been undertaken. Ordinarily we require a publisher to prove his right; we do not undertake to prove that he has not the right, as we did in this case. In dealing with this case in this reverse way it was necessary to keep a force of from 65 to 70 persons for upward of three months scrutinizing every scrap of paper which furnished any evidence upon the question of the subscription list. It is believed that not many publications could survive in a business way such an ordeal.

You say "why is not your investigation in this case, which you say on page 18 of your report is unusual in that so far as known never have any publisher's business methods been subjected to such a raking scrutiny" properly the beginning of such scrutiny of such periodicals. My answer to that extraordinary proposition is that such a course of procedure is impossible on its face. In this one case the conditions as to the subscription list might change to the extent of hundreds of thousands of copies before we completed an investigation concerning a given mailing. While this bureau was dealing with this case nearly all of its best equipped men were absent from the department three months and a half. The current business on this subject from day to day, together with that arising in connection with the commission's work in St. Louis, was all and even more than could be handled, to say nothing of taking up any new cases for investigation.

What might happen in the entire field while we were concentrating all of our energies on one case, may be left to conjecture. To make any sort of progress at all under such methods as were pursued in the Woman's Magazine case we should require a thousand additional employees available all the time in the field, as well as an addition to the departmental force, to deal adequately with the matters arising from day to day in connection with such investigations. We should not have taken up this case as we did but for the manner in which the issue had been drawn at the time the case was transferred to me. I have explained this before.

I state here again that I have not yet reported whether the Woman's Magazine is or is not an abuse of the second-class privilege. I have decided only that there were no excess mailings during the period covered by the investigation according to the usual rules and practices. I have, too, already stated that in the course of administration we sometimes require a publisher to correct practices which are improper in themselves, while the broader question of whether the publication itself as a whole is or is not an abuse may not be taken up for decision until sometime after because of its not being reached in the usual course of treating publications by classes.

The following is quoted from your memorandum, beginning on page 294:

"On page 19 of your report you state:

"If the postmaster conceived the Woman's Magazine to be an abuse, in whole or in part, of the second-class privilege, it was his duty to report his reasons for so believing to the Third Assistant Postmaster General and await instructions. It was wrong for him to proceed on his own motion and according to his own methods and judgment."

"This is precisely what the postmaster did, as shown by his letters to you under 11, 1905, and March 15 and April 2, 1906, which should be on

file in your office with copies of your replies thereto. His action in collecting postage was not taken until April 6, subsequent to the date of his communications to you, and in taking that action he was simply obeying the postal laws and regulations and the orders from your bureau, and he would have been derelict if he had not done so. If 'it was wrong for him to proceed on his own motion and according to his own methods and judgment' in these matters, then the regulations with which he complied should be rescinded.

"You state that whether this publisher be good or bad has nothing to do with the question of rate of postage on his periodicals. This is true, but have you given due consideration to the bearing the department's repeated experiences with him must have on his important and material statements? You have practically accepted as true those statements in so far as they pertain to the methods of treatment of expirations, as against the statements of the postmaster and his 50 clerks, the inspectors, and of reputable employees and ex-employees of the publisher, who state exactly the contrary. And are not these statements of the publisher discredited by your findings, as exhibited by your report? Especially should his statements be carefully investigated when he states, as he does in a letter dated March 14, 1905, that 'the paid-in-advance subscriptions to the Woman's Magazine is 1,250,000,' as against your finding of approximately 565,300; and that 'the paid-in-advance subscriptions to the Woman's Farm Journal is in advance of 500,000,' as against your finding of approximately 182,150?

"Applying the rule announced by you in your Circular XXV, you have rejected subscriptions for the Woman's Magazine to the number of 24,115, for the reason that such subscriptions were secured by so-called 'clubbing' arrangements with other publications, which you hold to be objectionable. Your objection is that such subscriptions were paid for at less than the advertised price; so much less, indeed, as to make the subscription rate merely nominal. But, while rejecting these subscriptions and declaring them to be illegitimate, you propose to direct the postmaster to return to the publisher the money collected upon copies sent in pursuance of such subscriptions as well as copies sent as samples upon that basis from October, 1905, to the present time—approximately \$7,716.80. If these subscriptions are illegitimate, then how can you hold that copies of the publication which have been sent heretofore to such subscribers, and sample copies in equal number, are entitled to transmission at the pound rate of postage?"

You quote from page 19 of my report concerning what I said was the postmaster's duty, and you say he did act accordingly. In the previous part of this letter I have shown that all correspondence from the postmaster on this subject between the date of the Bromwell-Weinschank letter, July 19, 1905, and April 14, 1906, was referred to you with the repeated requests that if you desired me to act on any of the postmaster's communications you would so direct.

You mentioned to me verbally a day or so ago that the postmaster's communications referred to you were returned to me with directions. If so, none of these directions ever reached me. On March 22, 1906, you instructed me to advise the postmaster as to a rate of postage in response to his letter of March 15, 1906, but that was not in any sense directing me to act in any other matters of administration. Your letter of April 14, 1906, itself merely placed upon me the duty of determining whether there had been excess mailings and whether the publications were entitled to second-class entry. It conveyed no instructions to me to take up other questions of administration or to instruct or deal with the postmaster.

On the contrary, your instruction of March 22, 1906, indicated that I was to assume in instructing the postmaster as to the rate of postage on alleged excess mailings that his findings as to such excess copies were correct. I was not instructed to take charge of the case. The postmaster's letter of April 2 to which you refer was merely a request for an interpretation of my letter of March 30, and my reply to that was submitted to you. All this is shown previously in this correspondence.

The letter of November 11, 1905, to which you refer, was not returned to this office, and no instructions concerning it were given; that is to say, I received no instructions.

You say that the postmaster's action in collecting postage was not taken until April 6, 1906, subsequent to the date of his communication to me, and that in taking that action he was simply obeying the Postal Laws and Regulations and the orders from my bureau. In the two letters found on pages 21 and 23

hereof I instructed him merely as to the rate of postage upon copies which he had determined by his own methods and in his own way, to be in excess. I repeat what I said in my report, that it was wrong for the postmaster to proceed on his own motion and according to his own methods and judgment, if as a matter of fact he did so. Prior to the date of this letter and subsequent to the date of the Bromwell-Weinschenk letter (July 19, 1905) I have given the postmaster at St. Louis no specific instructions as to how he should conduct inquiries concerning the mailings of these publications at his office in order to determine whether or not excess copies were mailed, or whether or not the publication was an abuse of the second-class privilege. He has all along proceeded on his own motion or under instructions of some other officer. There is no law or regulation requiring the postmaster to proceed as he did, and no postmaster ever before has done as he has done in this case. He did not proceed in accordance with the regulations, for there is no regulation requiring him to perform such functions as he undertook to perform. He practically took administration into his own hands, unless he was directed to do as he did by some officer superior to him.

I did not, as you assume, accept as true the statements of the publisher as against the statements of the postmaster, his 50 clerks, the inspectors, and the ex-employees of the publisher, as to expirations. I found the facts. His statement was taken only as to the length of time he was carrying expirations, for the purpose of making calculations. But that was not a material question in the ultimate decision. If he could carry expired subscriptions at all he had the right to carry them for some period; and whether at one time he carried them a month and at another time six months or even a year, was wholly immaterial to the question whether, at the time of the mailings in dispute, he was mailing excess copies. The decision was on the question of numbers, and whether the publisher told the truth as to the time carried is wholly immaterial because, had he said that he was carrying them a year instead of six months, our calculations would have been made on that basis, because of the lack of any rule of limitation. So far as I know there has been no statement by any of the officers or clerks or inspectors disputing the fact that during the period covered by the investigation, that is, from October, 1905, to May, 1906, the publisher was regularly carrying expirations as a part of the mailing of each issue. Their statements related to the conditions which existed at the time, and prior to the investigation made by the inspectors in October, 1905. As previously stated, the fact that the publisher may have been mailing copies prior to October, 1905, to persons who were not subscribers, could have no bearing upon my decision upon the question of excess mailings subsequent thereto, so long as the total mailings of none of the issues which I investigated exceeded twice the number of subscriptions, current and expired, which the publisher had for those issues.

I did not give consideration to the experiences of the department with the publisher, or the statement of the postmaster or his 50 clerks, the inspectors, or of the reputable employees and ex-employees of the publisher. That had nothing to do with the case. The case before me was one simply of numbers—was there or was there not an excess mailing according to the established practices and rules? I found the facts. I did not, as you seem to think, take any statement of the publisher as true.

It made no difference to me what the publisher stated in his letter of March 14 concerning the paid-in-advance subscriptions. Again I say I found the facts, and I did not take into consideration any statement of the publisher or of any other person in making my decision on the facts.

The 24,115 subscriptions rejected in my report in the case of the Woman's Magazine was because it appeared that the publication was either given to those alleged subscribers as a premium for purchasing merchandise, or in a clubbing arrangement where the price of the magazine was reduced to the subscriber, or where it appeared to be given away or thrown in as a premium for subscribing to some other periodical. That is a definite rule in Circular XXV and it was applied; but that had nothing to do with the question of excess mailings except that, if without that number of subscribers to justify the total mailings as to subscribers there would be insufficient subscribers to justify the total mailings including sample copies, there would then be an excess. But we could not so rule without giving the publisher an opportunity to cut off those alleged subscribers. That has always been done in such cases; especially would that rule apply in this case since so far as we know where this publication was sold to subscribers at less than the advertised price it was without
 -- ledge of the publisher and was unauthorized by him.

I did not, as you assume, declare those subscriptions illegitimate. The law does not require "legitimate" subscribers, and we can not read that requirement into the statute. The law requires "a legitimate list," and the rulings I made concerning 24,115 subscriptions were that they were not entitled to be mailed as to subscribers because of the rule in Circular XXV which was applied.

The whole question as to whether excess copies were mailed depended upon whether the publisher was entitled to carry expired subscriptions. Without them he would have mailed excess copies; with them he did not. This publisher had as much right as any other publisher to carry expired subscriptions, and we have no rule of limitation which we could have applied to such a situation as we found in his case merely to determine that there were excess copies mailed. We would, however, be justified in holding that a list of subscribers so largely made up of expired subscriptions, especially for such a cheap publication, and their being carried for such a length of time, vitiated the whole list, and that therefore there was not for the publications a "legitimate list of subscribers," as required by law.

To enable us to hold that there were excess mailings it would have been necessary to say either that the publisher was not entitled to carry expirations as subscriptions at all or that he was limited in the number he might carry and the time for which he might carry them. We can not say that he has any less rights than any other publisher, and all, or at least most of them, carry expired subscriptions. In this situation, therefore, there could be no justification for stepping in and saying that the expirations were too many or too long carried and that therefore there was an excess mailing; that would have been to make a rule for this case alone, and under court review it could not stand. The only way that we can deal with the expired subscriptions at all, as to limiting the number and the time carried, is to declare, as in the rule in Circular XXV, that where the proportion is too great, as compared with the whole list, that it vitiates the list as a whole, and therefore the publication has not a legitimate list as required. On this ground the publication might be excluded altogether from the second class. On such an action no court would interfere.

The reason I hold that we can not collect more than the pound rate on copies already sent in fulfillment of the 24,115 alleged subscriptions to which I took exception, and on sample copies to an equal number, is because there is no evidence whatever that it was the design or with the knowledge of the publisher that the Woman's Magazine should go to those alleged subscribers at less than the advertised price. We discovered that first. The treatment given this case is in accord with the general policy of dealing with the subject.

THE WOMAN'S FARM JOURNAL.

The following is quoted from your memorandum beginning on page 30:

"It appears from your report that you regard the situations of the Woman's Magazine and the Woman's Farm Journal as quite similar and that you based your action in both cases upon practically the same reasons. The general queries put to you in reference to the former publication are therefore to be taken as applying similarly to the latter.

"You state that the question in this (Farm Journal) case 'depends upon the decision to be made as to expiration subscriptions. If allowed, he is within his privilege; if disallowed, he has exceeded his privilege.' It appears that the question does not depend upon the matter of expired subscriptions alone, for the reason that copies of the October (1905) issue of this publication included in manila wrappers were not mailed as going to persons whose subscriptions had expired, as claimed by the publisher. The publisher mailed in October copies of the October issue about equal in number to his legitimate subscription list, of which 167,605 were in white wrappers, as is testified to by inspectors, the postmaster, and employees and ex-employees of the publisher. He mailed 144,930 copies of that issue in manila wrappers, and 38,255 copies in blue wrappers. The total number of copies mailed in the three kinds of wrappers (white, manila, and blue) were 350,790, all of which were treated as going to current subscribers. The 38,255 copies in blue wrappers were mailed as going to persons whose subscriptions had expired, to whom it had been the custom to send three copies a year in blue wrappers. The publisher first claimed to the inspectors and the postmaster that 144,930 copies mailed in manila wrappers as going to subscribers were on account of expired subscrip-

tions; and you have substantially taken his figures as correct by conceding, on page 26 of your report, that he has the privilege of mailing on account of expired subscriptions a number approximately equal to that stated by him, to wit, 145,991. However, in a subsequent letter, dated November 20, 1905, the publisher admits that 140,000 of the 145,000 copies which he was permitted to mail on account of expired subscriptions for October, 1905, were mailed to persons other than subscribers, whose names were selected by the publisher himself, and which were paid for out of a special fund that had been subscribed by his friends and sympathizers.

"This practice of using names other than those of persons whose subscriptions had expired is testified to by Mr. Eylerman, one of the present employees of the publisher, who states that prior to the inspectors' count in October, 1905, the 'lot number' or 'sample copy names' were used to pad the subscription list, and that this practice had been in operation since early in the year 1903; that the list of each publication was in this manner padded to the extent of about 125,000 every month.

"It will be noticed here that on page 26 of your report the Woman's Farm Journal is shown to have had 153,597 current subscriptions for October, 1905, and to have mailed free 448,962 copies. Is not 448,962 copies a 'considerable proportion' within the meaning of those terms as used in the case of Conant v. The Postmaster General, and if so, why should action not be taken in accordance with that decision?

"This information and all the other material evidence herein given bearing on the alleged misstatements, etc., of this publisher are said to have been given your commission in full by the postmaster and the inspectors during their investigation at St. Louis. Under what construction of the law and regulations should the postmaster be instructed to return money collected for transient second-class postage on copies of the publications which were not even sent to persons who had been subscribers and whose terms had expired, but were sent to parties who had never subscribed but whose subscriptions are claimed to have been paid for by others, which claim, however, the publisher has never substantiated within the knowledge of the postmaster or the inspectors? This question is pertinent for the reason that on December 19, 1906, when the postmaster at St. Louis submitted to you the question whether subscriptions to the Woman's National Daily, which had been paid for in large numbers by agents, were legitimate, you answered, under date of December 22, that 'Persons are not subscribers to Woman's National Daily whose subscriptions are not paid for by themselves but by other persons competing in a subscription-gathering contest.' If this rule is applicable to the Woman's National Daily, why is it not applicable to the Woman's Farm Journal and the Woman's Magazine?

"You state on page 27 of your report, in referring to the matter of expired subscriptions being carried from 14 to 16 months on this publication, that 'as stated before we have no definite ruling as to the proportion or length of time expired subscriptions may be carried, and we are here in the same embarrassing situation in making a ruling. If this case stood alone there would be no doubt as to the proper decision to make.' You further state that you consider 'the carrying of such a volume of expired subscriptions and for such a length of time, especially in such a low-priced publication, as a grave abuse.'

"The mere fact that this case does not stand alone, in your judgment, must not influence your determination upon the question before you. If the circumstances are such as, in your view, constitute a grave abuse, and there is authority under the law to put an end to that abuse, your report should so state.

"Comparing the number of expired subscriptions to the Woman's Farm Journal, treated by you as continuing subscriptions, with the number of such subscriptions to the Woman's Magazine treated in like manner, why was the proportion of expired subscriptions to current subscriptions conceded only to the extent of 34 per cent in the case of the Woman's Magazine, while the far greater proportion of 74 per cent was allowed in the case of the Woman's Farm Journal? Are we not forced to the conclusion that the publisher began the use of subscriptions which had expired over three months previously for the purpose of maintaining his mailings as to subscribers at the number claimed prior to the October count by the postmaster and the inspectors; and that he is claiming just such number each month as is necessary to meet the needs of each publication, in avoiding payment of transient second-class postage?

"On page 26 of this memorandum it was pointed out that a total of 285,881 copies of the Woman's Magazine was claimed by the publisher to have been

paid for and mailed from a special fund of \$10,000 provided by his friends and sympathizers. A total of 427,580 copies of the Woman's Farm Journal is also claimed by the publisher to have been mailed and paid for out of the same fund, at the price of one-half cent a copy. The same inquiry is made in respect of such copies of the Woman's Farm Journal as was made concerning those of the Woman's Magazine. Why should not postage at the transient rate have been collected on all these copies?

"Your statement that there were 145,991 expired subscriptions in October, 1905, of the Woman's Farm Journal is met with results of tests made by the postmaster and information given by the publisher that seem to clearly disprove the mailing of any such number of copies that month to persons whose subscriptions had expired. There were 350,720 copies of that issue mailed as to actual subscribers. The postmaster at St. Louis sent 1,000 inquiries to postmasters at offices to which such copies were mailed, to ascertain whether the persons receiving them had ever subscribed for the publications. It was developed that 45 per cent of such persons were current subscribers, that 2.75 per cent had been subscribers but their subscriptions had expired, and that 52.25 per cent had never subscribed, thus showing clearly that had the 144,930 copies mailed as going to subscribers in manila wrappers been addressed to those whose subscriptions had expired, as originally claimed by the publisher, and as is now stated by you, the percentage of expired subscriptions would have been 40 per cent instead of 2.75 per cent. A second test based upon the 145,991 copies mailed in manila wrappers, which the publisher claimed to have been sent to persons whose subscriptions had expired, showed that 90 per cent of such persons had never subscribed. Like tests, made by the postmaster for November, December, January, February, March, and April following, show that during the November mailing, which was after the count, the publisher grasped the expiration idea, and his mailings of copies that month to persons whose subscriptions had expired, increased from 2.75 per cent to 30 per cent, and maintained practically that ratio thereafter, and that his mailings to nonsubscribers decreased from 52.25 per cent in October to 9 per cent in November, clearly indicating his change in policy after the count. In addition to this, the inspector submitted to the publisher about November 15, 1905, names of 500 of the persons to whom 144,000 copies of the October issue had been mailed in manila wrappers, and which the publisher claimed were going to persons whose subscriptions had expired. The inspectors called upon the publisher to submit the card records of such former subscriptions. He was able to furnish the inspectors but 6 cards out of the 500. He was called to the post office subsequently, and when shown the result of the tests and asked for a further statement, he admitted that the 144,000 copies sent out in manila wrappers during October were not copies sent to persons whose subscriptions had expired, as originally claimed by him, and as you now contend, but were sent to parties whose names were selected by him, and were paid for out of the special fund subscribed by others. This statement he reduces to writing in a letter on November 20, 1905, giving the number of copies alleged to have been mailed and paid for out of this special fund for the preceding months, a copy of which letter is before me. Inasmuch as the tests made showed that the persons to whom the publisher claimed to have sent these copies had never subscribed therefor, and as the publisher subsequently admitted that they were not former subscribers, why do you in your report accept his original statement as true and credit him with 145,991 copies as having been mailed in October, 1905, to persons whose subscriptions had expired? In this connection, it may be stated that all of the above information was given to Mr. Feltis, of your commission, by the inspectors, and should have reached you. If it did, upon what basis do you rule that the postmaster should return the postage collected in such illegitimate mailings?

"I wish you to reconsider this case in the light of the inquiries and suggestions contained in this memorandum. You are not to determine whether it is politic or impolitic to rule upon this matter either the one way or the other. Your duty is merely to examine all the evidence before you and from whatever source derived, and determine whether under the law the action of the postmaster at St. Louis was proper and should be sustained, or was improper in whole or in part and should be reversed. You may have reason to believe that there are other publishers whose methods and practices are as bad as or worse than those of this publisher, but that fact certainly has no bearing upon the action which your duty demands you to take as to those features of the case which should be considered without regard to the class to which it belongs.

"It seems to me that in giving credence to the claims of the publisher you have entirely lost sight of the findings of the postmaster at St. Louis and the

post-office inspectors. Certainly the investigations made and reports submitted by those officers are entitled to at least equal weight with the claims of a publisher who is under investigation. It should be remembered also that the original investigation by these officers was made at a time when the methods of the publisher were more nearly normal and when he was not contemplating investigation by the Post Office Department. It was calculated to put the publisher upon his guard, and it is possible that when your subsequent inquiry was made, however thorough and conscientious it may have been, he had adopted measures which effectively concealed past practices. Indeed, subsequent inquiries by the postmaster and inspectors seem to have developed this to have been true.

"This is a case in which, among other things, the revenues of the Government are involved to the extent of \$80,000 between April, 1906, and the present date, and calls for the most careful action. The interests of the Government as well as the publisher should be thoroughly safeguarded, and no evidence in the possession of the department which will tend either directly or indirectly to throw light on the case should be ignored.

"I desire nothing but a just and impartial report, and will sustain you in making such a report, but I do not feel that, in the absence of a further statement from you in response to the question raised in this memorandum, I would be warranted in approving your action."

The circumstances in this case are, as you say, practically the same as in the case of the Woman's Magazine, and all the queries concerning that case apply substantially to this. The same may be said of the answers.

I found in this case that the expirations were in greater proportion to the whole list, and that they were carried for a longer period than in the case of the Woman's Magazine, but I was confronted with the same awkward situation as in the other case. There was no rule of limitation in existence, and we could not justly or legally invent one for this case alone. We had promised, and lived up to our promise always heretofore, that in making new rules they would be published and opportunity given publishers to meet the new requirements. Therefore, as bad as this case appeared to be, I could render no different decision on the question of excess mailings. The question decided in this case was entirely one of excess mailings. I have not yet reported on the question whether the publication as a whole is an abuse of the second-class privilege or whether the list of subscribers is a legitimate list as a whole.

In this case, as in the other, you appear to attach some importance to the color of the wrappers in which the copies were mailed. So far as my decision is concerned, that is wholly immaterial. As in the former case, it is a question of numbers—a comparison of totals. If the list of current subscriptions, plus those carried as expirations, was not less than half the total mailings, there was no excess; but the list might be judged to be not legitimate as a whole, and the whole publication be rejected from the second class on account of the volume of expired subscriptions. That, however, is not the question I decided. Whether there were excess mailings depends, as I said, upon whether we allowed the expirations to be carried or not, and there was no rule under which we could interfere with their carriage except in passing judgment on the list as a whole.

In this case, as in the other, nothing whatever that the publisher said or did, or any other person said or did, was given any weight. I went to the heart of the matter and secured the facts from the tangible written orders of the subscribers themselves. Neither did I give any weight or consideration to what was being done prior to the time covered by my own investigation. That was not before me. It is not a question of what the publisher had been doing before, but what he was doing at the time.

Again, the question, or a considerable portion, to which you refer has to do with the whole list, and not with the question of excess mailings.

Concerning the so-called material evidence to which you refer bearing on the alleged misstatements, etc., of this publisher, I have already explained that they were given no consideration whatever. I decided upon the facts as I found them, and no statement of the publisher or any other person can change the facts if they be the true facts.

You ask under what construction of law and regulation can the postmaster be instructed to return money collected at the transient second-class rate on copies of the publications which were not even sent to persons who had been subscribers and whose terms had expired. I do not know what the publisher may or may not have substantiated to the postmaster or inspectors. The ruling I

made in this case is in exact accordance with the practice. The rulings charging more than the pound rate on any copies mailed by a publisher are merely arbitrary, and under the provisions of section 448, Postal Laws and Regulations, are of doubtful legality, in view of the fact that the statute itself gives the publisher the pound rate upon all copies mailed by him except when they are addressed for local delivery as provided in section 452, Postal Laws and Regulations.

The arbitrary rulings referred to are simply to meet the situations as they arise from time to time. They become necessary to maintain the construction that a publisher is privileged to mail at the pound rate only copies sent as to subscribers and as sample copies. In all my annual reports I have endeavored to show the insufficiencies of the present law in relation to the second-class mail matter, and where any case was resisted by a publisher and likely to come to court review I have avoided making any of those arbitrary rulings, which would charge a rate of postage on any copies other than as provided in the statute for such copies when mailed by the publisher. I did apply the rule in this case that I applied in the Woman's National Daily case. I do not understand how you construe my statement to the contrary. It is the stock journal case over again.

You say concerning the views I expressed as to expired subscriptions in the Woman's Farm Journal case that the mere fact that this case does not stand alone should not influence my judgment, but if I had acted on that principle I should consider myself very unjust and unworthy of holding office administering on behalf of the Government a law enacted for the benefit of its citizens and presumably for all alike. Under the act of 1879, which applies to this case, it does not make any difference who the publisher may be or what his business methods in these or other particulars may be or whether he has incurred our displeasure in some particular; those matters are wholly immaterial to and apart from the question of postage rates upon his periodical. That is a question by itself, according to my view, and should be decided according to uniform rules applicable to all citizens alike, whether they be good or bad or truthful or otherwise in our estimation. If false evidence be submitted by any person in order to secure second-class rates wrongfully the statute provides proper punishment.

In this case, as in the other, you seem to confuse the question of whether the publication as a whole is an abuse and the question of whether the carrying expired subscriptions standing by itself, is an abuse. I treated them as two separate questions and I have not yet reported as to whether the publication as a whole is an abuse.

You ask why the proportion of expired subscriptions in one case was allowed to be greater than in another. I have repeatedly stated that for the purpose of determining whether or not there was an excess mailing, the proportion of expired subscriptions, be it great or small, and the length of time carried by it long or short could not be used in determining whether the publisher had exceeded his privilege so as to charge the transient rate on excess copies. We might have ruled him out of the second class altogether because his list was not legitimate, being made up too largely of expired subscriptions, but we could not fix a limit without due notice and an opportunity to publishers to conform. Whether the publisher is carrying expired subscriptions from month to month just enough to meet his needs as to circulation was not a question before me; it was wholly immaterial. It would be material as to judging whether the publication as a whole was an abuse.

The reason why we could not, in good morals, collect the transient second-class rate on the copies claimed to have been paid for by the special fund of \$10,000 to which you refer is because we had suspended in Circular XXV the rule which so provided for just such cases, namely, the stock journal suspension. It is the same question and same principle.

Concerning the 145,991 expired subscriptions in October, 1905, of the Woman's Farm Journal, I repeat that I found the facts and no information was sought from the postmaster or from any other person. They possess no information which could disprove what I found. My investigation was thorough, complete in every detail, and went to the heart of the matter. I gave no thought or attention to the tests being made by the postmaster as to whether copies were being sent to subscribers. I was deciding an appeal from him and I did not take his word or his findings, or the word or findings of the publisher, or any other person's word or findings; I got the facts from the subscribers' orders themselves, and they are indisputable.

You say that you wish me to consider this case in the light of the inquiries and suggestions contained in this memorandum. By that I understand that you mean that I should go over the case again and give weight and consideration to such matters as the color of the wrappers, to the publisher's statements, the postmaster's statement, and the inspectors' statements, etc. I shall do this if you so direct, but you gave me a question of appeal to decide and I took the statements or the findings of no person. I found the facts for myself. I found what in the last analysis is the only true evidence upon which to decide any case. I did not regard the color of the wrapper as real evidence. I did not regard any statement of the publisher or postmaster or the inspectors as having weight against the facts as I found them; and I found, after a discovery of all the facts material and essential to a correct decision, that the postmaster was wrong and should not be sustained in his claim that there were excess copies mailed.

I do not, as you seem to think, give credence to the claims of the publisher, nor did I lose sight of the findings of the postmaster, or the post-office inspectors, but I was deciding an appeal from them, and I took into account only the evidence which was conclusive. The whole case lies in the tables as shown in the report. They show the true facts.

I repeat, in answer to your question, that what the publisher had done in the past was immaterial.

To carry expired subscriptions is not unlawful. No publisher can be denied the right. If he overdoes it our remedy is to exclude the publication altogether. That is what the rule in Circular XXV means. It does not help on a question of excess mailings.

The amount of revenue involved is wholly immaterial to the case which I decided. I decided it according to the rules which I have explained and it would be the same whether there was \$1 or \$100,000 at stake.

I have no pride in being sustained in the decision which I made. You may feel that I have not drawn correct conclusions from the facts and circumstances of the case, but I did exactly as I felt bound to do as a public officer performing a quasi judicial function in a way to maintain the reputation of the Government for honest and fair dealing with its citizens on a plane of equality irrespective of any views I might have concerning the person who in the capacity of publisher was mailing the publication, and I did what I thought was exactly your instructions to do, namely, decide the case according to uniform rules and practices of this bureau, and upon the facts ascertained beyond any question of doubt.

In the October, 1905, issue of the Woman's Farm Journal there was a condition unsatisfactory and difficult of solution. One hundred and forty thousand copies were mailed apparently to persons whose names and addresses had been selected by the publisher from the lists held by him, and the copies were alleged to be paid for from the so-called special fund. The publisher states that on that issue, due to a mistake growing out of the absence of one of his employees in charge of the matter, an equal number of copies were not sent to actual subscribers. This is not a good explanation, but it is all we could get; and whether the copies were sent in place of copies to actual subscribers or to persons alleged to be subscribers when their subscriptions were paid for by third parties, or in place of expired subscriptions, the result was the same.

If we could establish that the publisher was not mailing expired subscriptions regularly prior to that time, and merely resurrected them for the purpose of justifying his total mailings, it would be a matter to be dealt with by itself, but could only be dealt with after the exact facts were ascertained.

Whatever may have been the conditions with reference to the October mailing, if the publisher subsequently discontinued the practice of sending copies to persons who were claimed to be subscribers and paid for out of the so-called special fund, and during the period covered by the investigation did mail copies to persons whose subscriptions had expired for from 1 month to 16 or 18 months, as the case may be, those conditions would have no weight in determining whether there were excess mailings beginning with the April (1906) issue.

Neither the publisher's explanation nor the evidence and statements of the postmaster and the inspectors determine anything as to whether there were excess mailings of the October (1905) issue. I found no rule in force applicable to the case on which we could decide that there was an excess mailing. The best evidence we could obtain was that reported as shown by the table on page 26 giving the current and expired subscriptions. The records so far back as they were available were not sufficient to enable the commission to do more than

make estimates of the probable number of expired subscriptions for that mailing. Whether they were used or not there is no positive proof. Either they were not used, and the 140,000 copies paid for by others were sent in their place, or the 140,000 copies paid were sent in the place of that many regular subscriptions dropped for that issue, or they took the place of sample copies; and in no event is there any rule which, if we were able to get the exact facts beyond dispute, by which we could determine by reason of their being mailed that they themselves were excess copies, or that other copies were mailed in excess.

For illustration, the report shows that for the October (1905) issue 602,559 copies were mailed. In order to establish that there were no excess copies mailed within the ruling, it would have to be shown that 301,000 approximately were sent to subscribers. These might have been made up of current subscribers' copies, expired subscribers' copies, or copies paid for from the special fund. This publisher is as much entitled to claim persons as subscribers whose subscriptions are paid for by third parties as the publishers of stock journals are, and to count a sample copy against each such subscription as the publishers of stock journals are privileged to do. Therefore, the technical difference as to whether the 140,000 copies paid for from the special fund were sent as to subscribers, or in the place of expired subscriptions, or in the place of current subscriptions accidentally dropped, has no effect upon the ultimate decision. There is nothing in the circumstances at all which would enable us to say that because of it there was an excess mailing.

From a statement of tests of mailings of the various issues of the Woman's Farm Journal, which was submitted to this office by the postmaster under date of December 19, 1906, it appears that from the issues of November, 1905, to April, 1906, inclusive, counting as subscribers those current and expired, the percentage of replies in favor of the publisher is in no case less than 80 and in some cases above 90. In this connection it is proper to state that the practice of this bureau has all along been to regard the whole list as legitimate when not less than 80 per cent of the replies received on a test are favorable to the publisher.

In the experience of making tests of subscription lists it is practically never found that a list is free from defect, but it is always a question of degree. Whether in this case the proportion of expired subscriptions to the whole number of subscriptions is sufficient to vitiate the list as a whole has not yet been reported upon.

If it is believed that the evidence in the possession of the postmaster and the inspectors will establish their claims as to excess mailings of the October, 1905, issue, I know of no better way to determine the issue than to bring the case to trial and let the court decide, for I have no basis which would justify me in making a decision different from the one I have rendered.

The tables on the following pages (159 and 160) with reference to the number of subscriptions, current and expired, on the Woman's Farm Journal list, and the total mailings of the issues covered by the investigation are self-explanatory:

Number of subscriptions on the dates indicated, including expirations carried for from one to sixteen months, and the total number of copies available at the pound rate, based thereon, for the issues of the months ending on the respective dates.

Date.	Subscriptions.			Equal number samples.	Total copies available (pound rate).
	Current.	Expirations.	Total.		
Oct. 31, 1905.....	153,597	145,991	299,588	299,588	599,176
Nov. 30, 1905.....	165,134	145,090	310,824	310,824	621,648
Dec. 31, 1905.....	190,014	136,017	326,031	326,031	652,062
Jan. 31, 1906.....	180,763	134,979	324,742	324,742	649,484
Feb. 28, 1906.....	191,676	138,464	330,140	330,140	660,280
Mar. 31, 1906.....	187,911	144,462	332,373	332,373	664,746
Apr. 30, 1906.....	197,006	137,862	334,868	334,868	669,736

1110 EXPENDITURES IN THE POST OFFICE DEPARTMENT.

Number of copies mailed at the pound rate, of the issues indicated, estimated from the postmaster's record of weights.

Issue.	Copies.		Total.
	Subscribers.	Samples.	
October, 1905.....	346,445	256,114	602,559
November, 1905.....	321,261	274,489	595,750
December, 1905.....	370,359	230,454	600,813
January, 1906.....	346,830	245,508	592,338
February, 1906.....	358,623	231,336	589,959
March, 1906.....	328,378	258,304	586,682
April, 1906.....	348,191	242,875	591,066

Number of copies the publisher was entitled to mail of the issues indicated, the estimated number mailed, and the difference between the two totals in each case.

Issue.	Number of copies.		Additional copies available.	Excess.
	Entitled to mail.	Actually mailed.		
October, 1905.....	599,176	602,559	.....	3,383
November, 1905.....	621,648	595,750	25,898	.....
December, 1905.....	652,062	600,813	51,249	.....
January, 1906.....	649,484	592,338	57,146	.....
February, 1906.....	660,280	589,959	70,321	.....
March, 1906.....	664,746	586,682	78,064	.....
April, 1906.....	669,736	591,066	78,670	.....

The foregoing table shows an excess mailing of 3,383 copies of *The Woman's Farm Journal* in October, 1905. I stated on page 32 of my report that it was deemed best to take no notice of that excess, because our figures were only estimates which might be thousands of copies out of the way, due to variation in the weight per copy, and if the estimates of expirations were based on 18 instead of 16 months' credit there would be no excess.

I think it well before closing to invite your attention to the fact that the postmaster's calculations were found to be not altogether reliable. His report in the letter dated April 23, 1906 (see p. 40 of this communication), is seriously defective, as shown by the commission's report (pp. 27-28). The postmaster erred to the extent of over 700,000 copies in his estimate of the number of subscribers' copies mailed with the November, 1905, issue of the *Woman's Magazine* over the number mailed with the October, 1905, issue, as shown by the record of weights in the St. Louis post office. He also erred to the extent of 300,000 copies in his estimate of a decrease in the number of sample copies mailed with the November issue from the number mailed with the October issue.

In connection with the foregoing statement your attention is invited to page 62 of this communication, from which it appears that the figures for the November mailings in the postmaster's report to you do not agree with those in his report to this office.

I have decided this case on the evidence submitted to me which, in my humble opinion, threw light upon the issue which I was directed to decide. I could not take for granted the findings of the postmaster, controverted by the publisher who appealed from his decision; I could not take as uncontroverted *ex parte* statements which may have formed the basis for the postmaster's decision. On the other hand, I could not take as conclusive any statement of the publisher which was in conflict with the findings of the postmaster. I therefore proceeded to get at the real facts by the most careful method I was able to conceive. In deciding the question I considered, as I said before, every fact which, to my mind, controlled or affected the determination of the question of excess mailings. If I have failed to consider any evidence which is relevant and decisive as to the issue, whether favorable to the Government or to the publisher, I should deem it my duty to reconsider the case in the light of such evidence

when it is pointed out to me. So far as your letter is concerned, I failed, as I think I have shown by this communication, to discover that any such evidence exists. If you, sitting on appeal from me, find, in the exercise of your own judgment that any such piece of evidence was omitted, I will, of course, following your direction, consider that piece of evidence; but in considering it I can only give it the weight which its own force and power entitles it to in my judgment. If in my judgment it neither controls the case nor affects the result of all the other evidence, I shall be compelled to arrive at the conclusion at which I have already arrived. I have already stated reasons why I do not think any matter brought up in your communication is controlling, or relevant to this issue; but if you hold that any such evidence is relevant, and will point it out and direct it to be considered, I will give it the best consideration that my mind enables me to give it, and that is all that I can do. Of course, if your mind draws a different conclusion than mine from the evidence which I have considered, I assume that you, in the exercise of your jurisdiction as Postmaster General, will decide the case yourself in accordance with your own views.

The great volume of papers in this case, and the great hurry in which this communication has been prepared, leads me to say that some essential explanation or statement of fact might have been omitted. I find now, at the last moment, that perhaps the paper would have been more complete if I had placed in it a copy of my memorandum addressed to you under date of October 14, 1905, which shows the situation at that time, and a copy of your letter of November 6, 1905, to Mr. E. G. Lewis, president of the Lewis Publishing Co., in which you expressed yourself as to the policy of the department.

The postmaster's and the inspectors' case seems to rest in the last analysis upon the theory that expired subscriptions may not legally be counted. In this proposition, knowing the universal practice of publishers and the rules of the department, it is impossible for me to concur. I recommend that all the evidence, material, and relevant which has been collected, be submitted at the trial of Mr. Lewis. My decision is not evidence of anything. The facts found and reported by the commission, and any facts relevant and material which can be submitted by the postmaster and the inspectors will, no doubt, be accepted as evidence by the court, which will draw its own conclusions irrespective of any decision I have made. I should consider it wholly unnecessary that the criminal proceedings against Mr. Lewis should be suspended or delayed on account of, or in any manner made to be dependent upon, any decision of mine.

The reports of the commission on the two publications, *The Woman's Magazine* and *The Woman's Farm Journal*, and all the exhibits connected therewith and necessary for a complete understanding of the case are at your command.

I have the honor to be, sir, very respectfully,

EDWIN C. MADDEN,

Third Assistant Postmaster General.

Among other things, this long letter from the Third Assistant showed that the alleged count or estimate of the local postmaster as to the number of subscribers' copies mailed and sample copies mailed erred in one instance to the extent of 700,000 copies, and in another to the extent of 300,000 copies, and was otherwise in error and unreliable as to the facts. It emphasized that the decision of the Third Assistant was based upon nothing whatever said or done by the publishing company.

MR. AUSTIN. You say that letter states that?

MR. MADDEN. Yes, sir.

MR. AUSTIN. What does the commission's report say in reference to that?

MR. MADDEN. It reports—

MR. AUSTIN. I just want to know whether your statement was based on its report.

MR. MADDEN. Yes, sir. I would not have known of those errors but for the commission. That is later explained again.

It emphasized that the decision of the Third Assistant was based upon nothing whatever said or done by the publishing company.

nothing said or done by the St. Louis postmaster; nothing said or done by the St. Louis inspectors, but was based upon an actual count of the original written orders of the subscribers themselves. There could be no better evidence. It makes clear also that, as the law was administered to all others, the publisher was entitled to mail without limit, but that if the limit were violated by him, the department's remedy was in rejection of the publications from the second class.

A reading of this letter (memorandum) of February 13 will show how this Postmaster General, who, under the regulations, which have been quoted, was presumed to hold himself aloof and open-minded to hear an appeal from the decision of one of his assistants, took the flat-footed position of prosecutor of the Lewis Publishing Co. in support of the St. Louis postmaster's findings in the court of the Third Assistant.

The Postmaster General's alleged argument for a reversal of the decision was entirely beside the question which had been determined. The decision of February 7 was simply to the effect that, under the rule applied by the St. Louis postmaster, no excess copies had been mailed. It was merely a question of numbers. The memorandum from the Postmaster General discusses practically every phase of the law in relation to second-class mail matter in an effort to wring from the Third Assistant a reversal of his decision of February 7, regardless of law, regardless of orderly practice, and regardless of the facts. Among other things, he says:

The contention of the postmaster at St. Louis is not alone that the publisher has mailed sample copies, so marked, in excess of the number he was entitled to mail, but that he has mailed as going to subscribers copies of the publication largely in excess of the number entitled by law to be so transmitted.

From the hour of the enactment of the law in relation to second-class mail matter, no administrative officer had ever before ruled, or undertaken to rule, that it was possible for a publisher to mail copies to subscribers "in excess of the number entitled by law to be so transmitted." The St. Louis postmaster had applied such a rule to the Lewis Publishing Co.: it was the first time in history. If a list of subscribers were found not to be legitimate as required by law, the department was performing its duty by rejecting the publication from the second class for that reason. But that the law limited the number of copies which might be sent to subscribers by the publisher was a fiction invented for this occasion.

Mr. AUSTIN. Did these men, working under the inspectors out there, or in concert with the inspectors and the postmaster at St. Louis, send out circular letters to this list of subscribers to verify the records of the publishing company, or to see whether they were actually and bona fide subscribers to the paper?

Mr. MADDEN. I think the record shows already, Mr. Austin, that the postmaster said he had been conducting such an inquiry for five months at that time.

Mr. AUSTIN. Does it appear in their report, or in the record here, that they did perform that kind of work, and, as a result, found out that Mr. Lewis's books or records showed hundreds of thousands of subscribers who were actually not bona fide subscribers?

Mr. MADDEN. You must understand it was a physical impossibility for the whole Post Office Department, if it had moved to St. Louis, to send inquiries to the millions of people who were there. All they

took were occasional names, taking so many per hundred, one for a hundred, and so on, and then they would send those inquiries out, and average them and determine. They did not determine in each individual case.

Mr. AUSTIN. In your letter there, in which you state that the postmaster in St. Louis was in error about this, and that your commission so reported—

Mr. MADDEN. The 700,000?

Mr. AUSTIN. Yes, and so reported, the Postmaster General asking you to revise your report, evidently based that request on something. Now, I ask you if he based it on any investigation made by the postmaster at St. Louis, and the inspectors and clerks, into the genuineness of the list of subscribers as shown on the books, and as reported by your commission?

Mr. MADDEN. His memorandum to me, I think, discussed the figures—I can not remember it all, of course—discussed the figures and holdings of the postmaster all the way through, and practically insists upon my supporting those, regardless of practice, and regardless of the law, and regardless of everything.

Mr. MCCOY. That does not answer Mr. Austin's question as to whether or not the Postmaster General, in asking you to review your findings and conclusions, did make use of any alleged circularization results obtained by the postmaster in St. Louis.

Mr. MADDEN. I do not recall that; I do not recall that he did.

Mr. AUSTIN. He challenged, for instance, the correctness of your statement, that they had not violated the regulations or the law, in the number of sample copies they had sent out.

Mr. MADDEN. Yes.

Mr. AUSTIN. He evidently based his challenge on something, and that is what I want to get at.

Mr. MADDEN. I do not know what he based it on.

Mr. BRITT. I think the deductions made by Mr. Madden from the report of this Fettis commission of inquiry, which commission he himself appointed, were somewhat misleading, though I do not suggest that he intends to mislead anybody by his statement. The commission considered the matter from sundry and divers angles. They made calculations as to what the actual subscription list was at that time, based on the fact of the allowance of no expirations. They also made it based upon the assumption of expirations of certain lengths. They also gave summaries and statements of mailings under certain indications of wrapper, certain colors of wrapper, as being indicative, in some instances, as I recall it, of expirations; in others of continuations.

Mr. MADDEN. Yes; I remember that now.

Mr. BRITT. In others as to subscriptions, and in others as to samples. This committee gave summaries and statistical abstracts in these various classes, and left the deductions to be made, as I recall its contents, having once read it, according to the construction of those who reviewed it, and whose action would be governed by it.

Mr. MADDEN. I think you are mistaken, if I understand you correctly. The Postmaster General, in his letter of February 13, of 40 pages, did say that I apparently gave no consideration to the evidence that Lewis at one time was mailing in one colored wrapper, and at another time in another, and that they were mixed up in one

way or another, and various other considerations of that kind claimed as the basis for the decision of the postmaster; and my answer of March 2, later, was to the effect that that had nothing to do with the question, when I had counted the original orders. What effect could the color of the wrapper have if it was changed ever 15 minutes, against the written order of the subscriber? They made the basis of their conclusions in one case that rotten rubber bands happened to be found around some of the subscriptions, and when they took them off they broke. My answer to that was that it had no relevancy to the thing. I ordered my commission to count them, and they reported to me upon that.

Mr. BRITT. I want to get this point before the committee for this simple reason, that they can not now reach this report. They are, of course, desirous of understanding it fully, and what I am stating is not a contradiction of your deductions, but the possibility of various deductions being made from this report.

Mr. MADDEN. Oh, yes.

Mr. BRITT. To wit, that they considered it from a great variety of angles. Some of the so-called orders which they counted may not be orders at all at this time; they may be orders, the subscriptions based upon which may long since have expired; and there was also confusion as to whether certain classes of copies were being sent as to subscribers, or as sample copies. I am only wanting the committee to get the idea at this stage that the commission gave these several abstracts and statements, and left the deductions or inferences to be made from the interpretation of the reports, and if you make the deductions that they were all bona fide, that is, possibly, from your view point, a proper deduction; while I might, with the construction that I would give to certain reports, or findings, reach a different conclusion, and make different deductions.

Mr. MADDEN. The only mistake I can see you have made in this statement is that the circumstances which you recite were circumstances on which the postmaster based his conclusions, and it appears in the Postmaster General's letter to me that the postmaster based his conclusions upon those matters, and my response to that was just almost in a sentence, that this was a numerical question. Did they have subscribers equal to 50 per cent of the mailings? It is a mere question of count. I sent my commission there, and I said "Count the original written orders." And they made that count and reported, and the report showed that no excess copies were mailed, except by disallowing the expired subscriptions.

Mr. AUSTIN. You would not count an expired subscription?

Mr. MADDEN. The circular which I have read in the record here provided for expired subscriptions. There is not a publisher in the United States who does not carry expired subscriptions.

Mr. BRITT. I will ask you if there was any regulation at that time that permitted expirations?

Mr. MADDEN. Yes, sir.

Mr. BRITT. In 1905?

Mr. MADDEN. I do not know about 1905.

Mr. BRITT. 1905, now; was there a regulation at that time?

Mr. MADDEN. No, but it was a common practice among publishers. You could not exclude it from one publisher alone.

Mr. BRITT. I know it was the common practice, but it left the department to determine what the character of the subscription was from the length of the expirations. There was no regulation to the effect that it must positively be allowed for a certain number of months.

Mr. MADDEN. There is no regulation yet. You made that after I went out of office.

Mr. BRITT. Yes; there is. I did not mean to precipitate a discussion. I only wanted to draw out the possibilities of that.

Mr. AUSTIN. Have you a copy of the report of that commission?

Mr. BRITT. He has.

Mr. AUSTIN. I want to read it.

Mr. MCCOY. That has been offered.

Mr. MADDEN. The Postmaster General had directed that the decision of the Third Assistant of February 7 be not sent forward to the postmaster at St. Louis, and not announced. The reply of the Third Assistant March 2 to the February 13 forty-page letter of the Postmaster General was a confirmation of the decision of February 7, as the law, the facts, and the practice required. On March 4, two days later, the Postmaster General suppressed altogether the Third Assistant's decision. In its stead, he issued, over his own name and title, a decision on the appeal of the Publishing Co. from the St. Louis postmaster's ruling, which he had sent April 14, 1906, to the Third Assistant to be determined.

The Postmaster General's decision reversed the decision of the Third Assistant. It supported the contentions of the St. Louis postmaster that excess copies of both publications had been mailed as charged by him.

Under the regulations, which have been quoted, the Third Assistant was the lawful and properly constituted officer to decide the question. The Postmaster General had jurisdiction only on appeal to him from the Assistant's decision by one of the parties in interest. Neither the St. Louis postmaster, nor the publishing company had appealed, for neither was informed of the purport of the Third Assistant's decision.

The Postmaster General wrote a separate letter in the case of each magazine. A compared copy of each is herewith submitted in one, marked "Exhibit No. 31."

EXHIBIT No. 31.

MARCH 4, 1907.

SIR: In the case of the appeal of the publisher of the Woman's Farm Journal from your recommendation and action in the matter of demanding and collecting postage at the transient second-class rate on all copies of said publication mailed monthly, in excess of its legitimate subscribers, which, as shown by the extended investigations of the department and the count of October 13, 1905, aggregated 141,328, and in excess of a like number properly marked and sent as sample copies, you are informed that upon the hearing granted the publisher on April 30 and May 1, 1906, and a careful and thorough investigation by the department, your recommendations are approved and your action sustained.

You will, therefore, remit to the department in canceled stamps attached to sheets of paper, the excess postage that has been collected by you, and also make demand on the publisher for the balance due the Government, under the law and the regulations of the department, at the transient second-class rate of postage, and upon all excess copies of the publication mailed on and after October 1, 1905.

In the matter of your recommendation that the department revoke the order granting second-class mailing privilege to this publication, you are informed that upon a hearing granted the publisher on the same dates (Apr. 30 and May 1, 1906), and upon a careful and thorough investigation of all of the evidence by the department I find that the publication does not have a legitimate list of subscribers; that it is designed and published primarily for advertising purposes; and that it is being circulated at a nominal rate, contrary to the law and the regulations of the department.

You will, therefore, refuse hereafter to accept for mailing at the second-class rate of postage copies of the said publication, and inform the publisher that the second-class mailing privilege heretofore extended the Woman's Farm Journal is withdrawn, and that the order granting the same is revoked.

Very respectfully,

GEO. B. CORTELYOU,
Postmaster General.

The POSTMASTER,
St. Louis, Mo.

MARCH 4, 1907.

SIR: In the case of the appeal of the publisher of the Woman's Magazine from your recommendation and action in the matter of demanding and collecting postage at the transient second-class rate on all copies of said publication mailed monthly in excess of its legitimate subscribers, which, as shown by the extended investigations of the department and the count of October 13, 1905, aggregated 539,901, and in excess of a like number properly marked and sent as sample copies, you are informed that upon the hearing granted the publisher on April 30 and May 1, 1906, and a careful and thorough investigation by the department, your recommendations are approved and your action sustained.

You will, therefore, remit to the department in canceled stamps attached to sheets of paper the excess postage that has been collected by you, and also make demand on the publisher for the balance due the Government, under the law and the regulations of the department, at the transient second-class rate of postage, upon all excess copies of the publication mailed on and after October 1, 1905.

In the matter of your recommendation that the department deny the pending application, submitted August 22, 1902, for entry of this publication as second-class matter, you are informed that upon a hearing granted the publisher on the same dates (Apr. 30 and May 1, 1906), and upon a careful and thorough investigation of all of the evidence by the department, I find that the publication does not have a legitimate list of subscribers; that it is designed and published primarily for advertising purposes; and that it is being circulated at a nominal rate, contrary to the law and the regulations of the department.

You will, therefore, refuse hereafter to accept for mailing at the second-class rate of postage copies of the said publication, and inform the publisher that his application for entry of the Woman's Magazine as second-class matter is denied.

Very respectfully,

GEO. B. CORTELYOU,
Postmaster General.

The POSTMASTER,
St. Louis, Mo.

The following is from the Postmaster General's letters:

In the case of the appeal of the publisher of the Woman's Magazine from your recommendation and action in the matter of demanding and collecting postage at the transient second-class rate on all copies of said publication mailed monthly in excess of its legitimate subscribers, which, as shown by the extended investigations of the department and the count of October 13, 1905, aggregated 539,901, and in excess of a like number properly marked and sent as sample copies, you are informed that upon the hearing granted the publisher on April 30 and May 1, 1906, and a careful and thorough investigation by the department, your recommendations are approved and your action sustained.

You will, therefore, remit to the department in canceled stamps attached to ~~the~~ ^{sheets of paper} the excess postage that has been collected by you, and also

make demand on the publisher for the balance due the Government, under the law and the regulations of the department, at the transient second-class rate of postage upon all excess copies of the publication mailed on and after October 1, 1905.

In the case of the appeal of the publisher of the *Woman's Farm Journal* from your recommendation and action in the matter of demanding and collecting postage at the transient second-class rate on all copies of said publication mailed monthly in excess of its legitimate subscribers, which, as shown by the extended investigations of the department and the count of October 13, 1905, aggregated 141,328, and in excess of a like number properly marked and sent as sample copies, you are informed that upon the hearing granted the publisher on April 30 and May 1, 1906, and a careful and thorough investigation by the department, your recommendations are approved and your action sustained.

You will, therefore, remit to the department in canceled stamps attached to sheets of paper the excess postage that has been collected by you, and also make demand on the publisher for the balance due the Government, under the law and the regulations of the Department, at the transient second-class rate of postage, upon all excess copies of the publication mailed on and after October 1, 1905.

It will be observed that the decision of the Third Assistant February 7, affirmed March 2, 1907, left the indictments of President Lewis and the other officers of the company for conspiracy to defraud the Government of postage without evidence, even if the "form of the statute" were as alleged in the indictments. It has been shown how the inspectors, after the securing of the indictments, found the postal laws "silent on that direct proposition," and how the deficiency was supplied by a doctored ruling of the Third Assistant, forwarded to the St. Louis postmaster March 30, 1906. The decision of the Postmaster General, March 4, sustaining the St. Louis postmaster, supplied the evidence.

In the Postmaster General's letters of March 4, from which the foregoing quotations are taken, it is conceded that there were 539,901 "legitimate subscribers" for the *Woman's Magazine* and 141,328 "legitimate subscribers" for the *Woman's Farm Journal*. These were the figures of the alleged count of the St. Louis postmaster, from which the publishing company had appealed, alleging the count was not accurate.

The Postmaster General sustained the St. Louis postmaster's ruling that excess copies were mailed in April, 1906, and thereafter until his decision March 4, 1907, upon this so-called count made in October, 1905. Nothing was allowed for the changes in the lists which were certain to have occurred between April, 1906, and March, 1907. And he says that his decision, sustaining the postmaster, is made upon "the hearing granted the publisher on April 30 and May 1, 1906, and a careful and thorough investigation by the department"; and this in the face of the facts that the hearing was not before him, but before the Third Assistant; and that the "careful and thorough investigation," which required 65 persons three months and a half, was conducted by the Third Assistant, and showed that the figures of the postmaster were not true.

If we reread the records in the case, especially the letter from the St. Louis postmaster, April 23, 1906, we shall find that the investigations conducted by him, including the secret one conducted under the cover of the Third Assistant's, from which the postmaster ascer-

tained his figures, were actually conducted by the post-office inspectors in his name. The purpose of bringing the postmaster into the case was to give the matter the appearance of being handled "along the usual lines pursued by your bureau." An examination of the postal regulations, section 44, will show that post-office inspectors are the "special representatives of the Postmaster General" and that all postmasters are subordinate to them.

The ruling of the St. Louis postmaster was to the effect that in April double the number of the admitted legitimate subscribers in October, 1905, were entitled to be mailed in April, 1906, at a cent a pound. Copies over and above that were called excess copies, and subject to excess postage. The "excess" rate he applied was 1 cent for each 4 ounces or fraction, known as the "transient" rate, fixed in the following statute:

The rate of postage on newspaper and periodical publications of the second class, when sent by others than the publisher or news agent, shall be 1 cent for each 4 ounces or fractional part thereof, and shall be fully prepaid by postage stamps affixed to said matter. (Act of June 9, 1884.)

It is not charged that the copies upon which this rate was demanded were sent by others than the publishing company, that is to say, that the company was sending them on behalf of some other person or persons, who under the law would be required to pay the rate fixed in this statute. In law, unless that were true, the rate could not be enforced. The publications, being classified as "of the second class," the only question for the postmaster was, Who was the legitimate sender? If the publisher, the statute previously quoted fixed the rate at a cent a pound without limit. If "others than the publisher," it was 1 cent for each 4 ounces or fraction, even though the actual sending were by the publisher, as in the case of the stock journals.

It was shown in the Third Assistant's letter of March 2 to the Postmaster General that the St. Louis postmaster erred in his count in one case to the extent of 700,000 copies, and in another to the extent of 300,000 copies, and that otherwise he was unreliable. The effect of the decision of the Postmaster General, sustaining the St. Louis postmaster under the conditions described, was to cover into the Treasury about \$29,550 of the company's money, which had been deposited at the rate fixed in the foregoing statute with the postmaster in trust, pending the decision on the appeal. According to the theory of the decision, the company was now liable on its \$50,000 bond for additional excess postage not covered by the \$29,550 deposited in cash.

If the officials had by force broken down the doors of the company's plant, blown open its vaults and taken the same amount of money therefrom, it would have been no bolder or more high-handed robbery than was perpetrated upon the company by means of this decision of the Postmaster General, false as to law and false as to facts.

Mr. AUSTIN. Could you not, from the other side, say that your decision would have taken out of the national Treasury so much?

Mr. MADDEN. No, sir; it could not, because the law gave the right to carry it at a cent a pound.

The suit to recover on copies of the Woman's Farm Journal, ridiculous to state, is in part on the 300,727 copies, which were con-

fiscated by the postmaster in October, 1905. Those copies are still in the possession of the department. The lawful rate of a cent a pound (about \$700) was paid on those copies. No service at all was rendered for that money. Even if the statute were as alleged, how could more postage be due on these copies?

The aggregate amount of these three suits is about \$130,000. No one of them has yet been brought to trial.

What has been said as to the fraudulent indictments of President Lewis and the other officers of the company applies to these suits. They are without probable cause, without warrant of law, without warrant of fact, and spurious. They seriously reflect upon the honor and integrity of the Government in dealing with its citizens.

Certified copies of these three suits (5474, 5515, and 5516) are submitted herewith, marked Exhibits Nos. 32, 33, and 34.

EXHIBIT No. 32.

In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri. United States of America, plaintiff, *v.* Lewis Publishing Co. a corporation, defendant. At law, No. 5515.

The United State of America, plaintiff, by Henry W. Blodgett, its attorney for the district aforesaid, complains of defendant, Lewis Publishing Co., a corporation created and existing under the laws of the State of South Dakota, and having its principal office in and doing business within the State of Missouri and the eastern division of the eastern judicial district thereof.

That said defendant, Lewis Publishing Co., at the times hereinafter mentioned, was conducting and publishing a certain printed paper or publication appearing at monthly intervals, known and distinguished as the "Woman's Farm Journal," which said paper or publication of the said defendant had, prior to the times hereinafter mentioned, been duly entered to the mails of the United States as mailable matter of the second class, to be transmitted at the second-class rates of postage, and had obtained a certificate of entry authorizing said paper or publication to be mailed at the second-class rates of postage at the United States post office in the city of St. Louis, and State of Missouri, by means whereof the defendant was authorized by virtue of said certificate for the Woman's Farm Journal to mail at the United States post office at the city of St. Louis and State of Missouri at one of the second-class rates, to wit, at the second-class rate of 1 cent per pound or fraction thereof, copies of said publication to such persons as constituted the legitimate list of subscribers to such publication, to news agents engaged in business as news dealers or sellers of second-class publications, to other publications admitted to the second class of mail matter, exchanging in good faith copy for copy with the said publication aforesaid, and in addition thereto sample copies to a number not greater than the aggregate number of such copies sent, at each issue thereof, to regular subscribers to the same; and thereupon the said defendant as publisher of the said paper or publication, so entered as second-class matter, opened an account with the postmaster of the United States at the city of St. Louis, State of Missouri, for the mailing at the second-class rates of the copies of said publication.

That at and during the times hereinafter mentioned, the persons constituting the legitimate list of subscribers to the said Woman's Farm Journal were not at any time in excess of 141,328, whereby the number of copies which the said defendant was, under the laws of the United States, authorized to mail as to subscribers at the second-class pound rate of postage at said post office at St. Louis, Mo., was not at any time in excess of 141,328, and the number of copies which the defendant was entitled to mail as samples, when properly so marked, was not in excess of a like number, 141,328, at any mailing of the said publication, said subscribers' copies and sample copies thereby aggregating not to exceed 282,656, and all copies mailed as to subscribers in excess of said number of 141,328, and all copies mailed as samples in excess of said 141,328, because and were chargeable at the transient second-class rate of postage, to wit, the rate of 1 cent for each 4 ounces or fractional part thereof, to be fully prepaid by postage stamps affixed to said matter.

Yet the defendant, well knowing the premises, but designing and intending to secure the transmission through the mails of the United States of copies of its said publication in excess of the said number of 141,328 subscribers' copies, and in excess of a like number of copies properly marked and sent as samples of the said publication, and intending to defraud the United States and the Post Office Department thereof of the difference between the postage upon said excess copies at the transient second-class rate of postage and the pound rate of postage, did, on, to wit, at divers times during the month of October, 1905, and at various times thereafter, offer at the said post office at St. Louis, Mo., for transmission in the mails as second-class matter at the pound rate of postage, a large number of copies of the said publication, the *Woman's Farm Journal*, in excess of the number which the said defendant was lawfully entitled to mail at the pound rate of postage, all of which said copies were represented by said defendant to be copies of said publication which it was entitled to mail as copies addressed to bona fide subscribers to said publication and as samples within the limits aforesaid.

And the plaintiff says that the copies so falsely represented by the defendant, and the postage lawfully due thereon, and the difference between the amount so due and the amount paid by the defendant was as follows: For the month of October, 1905, 366,740 copies, upon which the postage at the transient second-class rate of postage was \$3,667.40, and the postage actually paid by the defendant \$733.30; in the month of November, 1905, 298,138 copies, upon which the postage due at the transient second-class rate was \$2,981.38, upon which the defendant paid the sum of \$670.49; for the month of December, 1905, 324,828 copies, upon which the postage due at the transient second-class rate was \$3,248.28, and upon which the defendant actually paid the sum of \$540.37; for the month of January, 1906, 315,023 copies, upon which the postage due at the transient second-class rate was \$3,150.23, and the postage actually paid at the pound rate was \$520.33; for the month of February, 1906, 299,805 copies, upon which the postage due at the transient second-class rate was \$2,998.05, and upon which the defendant actually paid at the pound rate of postage \$675.04; for the month of March, 1906, 306,632 copies, upon which the postage due at the transient second-class rate was \$3,066.32, and upon which the defendant actually paid the sum of \$684.75, whereby there remained due and payable to the said plaintiff by reason of the mailings for said months the sum of \$15,287.38, being the difference between the sum justly due and payable thereon at the transient second-class rate of postage, \$19,111.66, and the sum actually paid thereon by the defendant at the pound rate of postage, to wit, \$3,824.28.

And the plaintiff further says that the said defendant continuing to offer at said post office for transmission in the mails of the United States at the pound rate of postage a large number of copies of the said periodical in excess of the number which the said defendant was lawfully entitled to mail, as aforesaid, the said plaintiff, thereupon, through one Frank Wyman, postmaster in charge of the post office of the United States at said city of St. Louis, State of Missouri, made demand upon the said defendant and continued to demand that it should pay the postage upon such copies in excess of 141,328 subscribers' copies and a like number of samples at the transient second-class rate of postage, against which the defendant protested, insisting that such copies so held by plaintiff to be in excess were in fact copies which it was entitled to mail at the pound rate, and appealed from such holding and demand to the Post Office Department at the seat of government, and the said plaintiff thereupon, through the said Frank Wyman, postmaster as aforesaid, pending said appeal, demanded of the said defendant and the said defendant agreed that it would deposit in money a sum sufficient to cover the postage upon such excess at the transient second-class rate, and thereupon said defendant did, in the month of April, 1906, deposit with said Frank Wyman, acting as such postmaster in charge of the United States post office at St. Louis, the sum of \$3,100, and proceeded to mail 297,157 copies in excess of those to which it was lawfully entitled, upon which there was due and payable at the transient second-class rate of postage \$2,971.57; and afterwards, to wit, in the month of May, 1906, the defendant made a further deposit with said Frank Wyman, postmaster as aforesaid, of \$3,100 and mailed 289,385 copies in excess of those to which it was lawfully entitled, upon which was due and payable at the transient second-class rate of postage the sum of \$2,893.85; and afterwards, to wit, in the month of June, 1906, the defendant made a further deposit of \$3,100 and mailed 292,425 copies in excess of those to which it was lawfully entitled, upon which was due

and payable at the transient second-class rate of postage the sum of \$2,024.25; and afterwards, to wit, in the month of July, 1906, the said defendant made a further deposit of \$3,100 and mailed 292,337 copies in excess of those to which it was lawfully entitled, upon which was due and payable at the transient second-class rate of postage the sum of \$2,923.37, which said deposits as aforesaid, aggregating the sum of \$12,400, were in excess of the sum due and chargeable upon such mailings, to wit, \$11,713.04, by the sum of \$686.96, for which credit was duly given by the said plaintiff upon said account.

And the plaintiff further says that afterwards, to wit, on or about the 1st day of August, 1906, the defendant, the Lewis Publishing Co., requested that, pending its appeal to the Post Office Department, in lieu of money deposits of a sum sufficient to cover the deficiency in postage upon all copies of its said publication, the Woman's Farm Journal, in excess of the number held by the plaintiff to be lawfully entitled to mailing at the pound rate of postage, its bond, with good and sufficient surety, be accepted by the Postmaster General to cover the aggregate difference between the postage thereon at the pound rate and such rate as should be determined by the said department to be due and payable, and that said arrangement so proposed was consented to by the Postmaster General, and said Lewis Publishing Co. did, in pursuance thereof, by its certain writing obligatory, secure the payment of such difference, and thereupon the said Lewis Publishing Co., continued, as theretofore, to mail copies of its said publication, the Woman's Farm Journal, in excess of the number which the said defendant was lawfully entitled to mail at the pound rate of postage, but without paying upon such excess copies either the pound rate or any other rate of postage; and said defendant, the Lewis Publishing Co., did afterwards, to wit, at divers times from and after said 1st day of August, 1906, and before the 5th day of March, 1907, offer for mailing and mailed a large number of copies of its said publication, the Woman's Farm Journal, to wit, in August, 1906, 293,437 copies, upon which the postage due at the transient second-class rate was \$2,934.37; in the month of September, 1906, 280,400 copies, upon which the postage due at the transient second-class rate was \$2,904; in the month of October, 1906, 246,313 copies, upon which the postage due at the transient second-class rate was \$2,463.13; in the month of November, 1906, 275,298 copies, upon which the postage due at the transient second-class rate was \$2,752.98; in the month of December, 1906, 282,647 copies, upon which the postage due at the transient second-class rate was \$2,826.47; in the month of January, 1907, 301,835 copies, upon which the postage due at the transient second-class rate was \$3,018.35; and in the month of February, 1907, 288,483 copies, upon which the postage due at the transient second-class rate was \$2,884.83, which said sums at the transient second-class rate aggregated the sum of \$19,684.13, and there became due and payable to the plaintiff postage to the amount of \$19,684.13.

And the plaintiff says that the said several sums, to wit, the sum of \$15,237.38, the difference between the transient second-class rate and the second-class pound rate for the mailings of such excess copies from the month of October, 1905, to the month of March, 1906, and the said sum of \$19,684.13, postage at the transient second-class rate upon such excess mailings for the month of August, 1906, down to and including the 5th day of March, 1907, remained due and payable, save only with respect to the credit of \$686.96 as aforesaid, and an additional credit of \$44.75 being amount overpaid at second-class pound rate, which said sums, less said credit, aggregate the sum of \$34,239.80, which last-mentioned sum the said defendant became and was, under the statutes of the United States, liable to pay and ought to have paid plaintiff.

That by reason of the said last-mentioned sum of money, to wit, \$34,239.80, being and remaining wholly unpaid, and by force of the statute in such case made and provided an action has accrued to the plaintiff to demand and have the last-mentioned sum, residue of the sums aforesaid, of and from the said defendant.

Yet the said defendant, although often requested so to do, has not yet paid said sum of \$34,239.80, or any part thereof, but so to do has hitherto wholly refused and still refuses to the damage of said plaintiff of \$34,239.80; and therefore it brings its suit.

And plaintiff sues the defendant for other money payable to the plaintiff by the said defendant for that the said defendant afterwards, to wit, on the 5th day of March, 1907, at the city of St. Louis, within the eastern division of the eastern district of Missouri, was indebted to the said plaintiff in the sum of

\$34,239.80 for certain postal charges, postages and duties then due and of right payable according to the form of the statute in such case made and provided, upon, for, and in respect of the mailing, posting, carriage, and transportation of divers copies of a certain printed paper or publication of the defendant, entitled "The Woman's Farm Journal," which before that time had been mailed, posted, carried and transported at and from the said post office at St. Louis, Mo., to be paid to the plaintiff, through the said Frank Wyman, as postmaster at said city of St. Louis, Mo., by the said defendant, when the said defendant should be thereunto afterwards requested.

Whereby and by reason of the last-mentioned sum of money being and remaining wholly unpaid, and by force of the statute in such case made and provided an action has accrued to the said plaintiff to demand and have of and from said defendant the said sum of \$34,239.80.

Yet the said defendant, although often requested so to do, has not yet paid said sum of \$34,239.80, or any part thereof, but so to do has hitherto wholly refused and still refuses to the damage of the said plaintiff of \$34,239.80; and, therefore, it brings this suit.

And the plaintiff sues the defendant for other money payable to the plaintiff by the said defendant for that, whereas said defendant, afterwards, to wit, on the 5th day of March, 1907, at the city of St. Louis, within the eastern division of the eastern district of Missouri, accounted with the said Frank Wyman, as postmaster of the United States in and for and at the city of St. Louis, Mo., of and concerning divers other sums of money, before that time then due, owing, in arrear, and unpaid, from the said defendant to the said plaintiff in respect of the mailing, posting, carriage, and transportation of divers copies of a certain printed magazine or publication of the defendant, entitled "The Woman's Farm Journal," and upon that accounting the said defendant was found to be in arrear and indebted to the said plaintiff in the further sum of \$34,239.80, to be paid by the said defendant to the said plaintiff when the said defendant should be thereunto afterwards requested.

Whereby and by reason of said last-mentioned sum being and remaining wholly unpaid, and by force of the statute in such case made and provided, an action has accrued to the said plaintiff to demand and have of and from the said defendant the said sum of \$34,239.80, according to the particulars of the demand hereunto annexed.

Yet the said defendant, although often requested so to do, has not yet paid the said sum of \$34,239.80, or any part thereof, but so to do has hitherto wholly refused and still refuses to the damage of the said plaintiff of \$34,239.80, and therefore it brings this suit.

And the plaintiff claims the sum of \$34,239.80, besides interest and costs.

HENRY W. BLODGETT,
United States Attorney.

TRUMAN P. YOUNG,
Assistant United States Attorney.

(Endorsed: Filed November 5, 1907. James R. Gray, clerk.)

UNITED STATES OF AMERICA,

Eastern Division of the Eastern Judicial District of Missouri, ss:

I, James R. Gray, clerk of the Circuit Court of the United States, in and for the Eastern Division of the Eastern Judicial District of Missouri, do hereby certify that the writing hereto attached is a true copy of the petition in case No. 5515 of United States of America, plaintiff, v. Lewis Publishing Company, defendant, as fully as the same remains on file and of record in said case in my office. And that the above-entitled cause is pending in this court.

In witness whereof, I hereunto subscribe my name and affix the seal of said court, at office in the city of St. Louis, in the eastern division of said district, this 10th day of January in the year of our Lord 1911.

[SEAL]

JAMES R. GRAY,
Clerk of said Court.

(Indorsed:) No. 5515. United States Circuit Court, Eastern Division of the Eastern Judicial District of Missouri. United States of America against Lewis Publishing Company. Duly certified copy of petition in the above-entitled cause.

EXHIBIT No. 33.—In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri. United States of America, plaintiff, v. The Lewis Publishing Co., a corporation, defendant. At law. No. 5516.

The United States of America, by Henry W. Blodgett, its attorney for the district aforesaid, complains of the defendant Lewis Publishing Co., and for cause of action against said defendant, plaintiff states:

That said defendant is a corporation created and existing under the laws of the State of South Dakota and having its principal office and doing business in the State of Missouri and in the eastern division of the eastern judicial district of Missouri. That said defendant, the Lewis Publishing Co., at the times hereinafter mentioned was conducting and publishing a certain printed paper or publication appearing at monthly intervals, known and distinguished as "The Woman's Magazine," for which said paper or publication said defendant had, prior to the times hereinafter mentioned made application for entry to the mails of the United States as mailable matter of the second class to be transmitted at the second-class rates of postage and had obtained, pending consideration of, and decision upon, said application, a temporary permit authorizing said paper or publication to be mailed at second-class rates at the United States post office in the city of St. Louis, and said State of Missouri; by means whereof the said defendant was authorized, by virtue of said temporary permit for the Woman's Magazine, to mail at the United States post office at the city of St. Louis, in the State of Missouri, at one of the said second-class rates to-wit: at the second-class rate of 1 cent a pound or fraction thereof, copies of said publication to such persons as constituted the legitimate list of subscribers to such publication to news agents engaged in business as news dealers or sellers of second-class publications, to other publications admitted to the second class of mail matter exchanging in good faith copy for copy with the said publication aforesaid, and in addition thereto sample copies to a number not greater than the aggregate number of such copies sent at each issue thereof, to regular subscribers to the same.

That at and during the times hereinafter mentioned, the persons constituting the legitimate list of subscribers to the said Woman's Magazine were not at any time in excess of 539,901, whereby the number of copies which the said defendant was, under the laws of the United States, authorized to mail as to subscribers at the second-class pound rate of postage at said post office at St. Louis, Mo., was not at any time in excess of 539,901; and the number of copies which the defendant was entitled to mail as samples, when properly so marked, was not in excess of a like number 539,901 at any mailing of the said publication, said subscribers' copies and sample copies thereby aggregating not to exceed 1,079,802; and all copies mailed as to subscribers in excess of said number of 539,901, and all copies mailed as samples in excess of said 539,901, became and were chargeable at the transient second-class rate of postage, to-wit, the rate of 1 cent for each 4 ounces or fractional part thereof, to be fully prepaid by postage stamps affixed to said matter.

Yet the defendant, well knowing the premises but designing and intending to secure the transmission through the mails of the United States of copies of its said publication in excess of the said number 539,901 subscribers' copies, and in excess of a like number of copies properly marked and sent as samples of the said publication, and intending to defraud the United States postal service, and the plaintiff acting in that behalf of the difference between the postage upon said excess copies at the transient second-class rate of postage and the pound rate of postage did, on, to-wit, at divers times during the month of October, 1905, and at various times thereafter, offer at the post office at St. Louis, Mo., for transmission in the mails as second-class matter at the pound rate of postage a large number of copies of the said publication the Woman's Magazine, in excess of the number which the said defendant was lawfully entitled to mail at the pound rate of postage, all of which said copies were represented by said defendant to be copies of the said publication which it was entitled to mail as copies addressed to bona fide subscribers to said publication and as samples within the limits aforesaid.

And the plaintiff says that the copies so falsely represented by the defendant, and the postage lawfully due thereon, and the difference between the amount so due and the amount paid by the defendant was as follows: For the month of October, 1905, 550,685 copies, upon which the postage at the transient second-class rate of postage was \$5,506.85 and the postage actually paid by

the defendant \$1,155.57; in the month of November, 1905, 589,249 copies, upon which the postage due at the transient second-class rate was \$5,892.49, upon which the defendant paid the sum of \$1,325.60; for the month of December, 1905, 727,488 copies, upon which the postage due at the transient second-class rate was \$7,274.88, and upon which the defendant actually paid the sum of \$1,136.82; for the month of January, 1906, 622,792 copies, upon which the postage due at the transient second-class rate was \$6,227.92 and the postage actually paid at the pound rate was \$1,400.60; for the month of February, 1906, 574,712 copies, upon which the postage due at the transient second-class rate was \$5,747.12, and upon which the defendant actually paid at the pound rate of postage \$1,293.77; for the month of March, 1906, 649,458 copies, upon which the postage due at the transient second-class rate was \$6,494.53, and upon which the defendant actually paid the sum of \$1,080.53, whereby there remained due and payable to the said plaintiff by reason of the mailings for said months the sum of \$29,840.90, being the difference between the sum justly due and payable thereon at the transient second-class rate of postage, \$37,233.84, and the sum actually paid thereon by the defendant at the pound rate of postage, to wit, \$7,392.94; and the plaintiff further says that the said defendant continuing to offer at said post office for transmission in the mails of the United States at the pound rate of postage a large number of copies of the said periodical in excess of the number which the said defendant was lawfully entitled to mail as aforesaid, the said plaintiff thereupon made demand upon the said defendant and continued to demand that it should pay the postage upon such copies in excess of 539,901 subscribers' copies, and a like number of samples, at the transient second-class rate of postage, against which the defendant protested and appealed therefrom to the Post Office Department at the seat of government, and the said plaintiff thereupon, pending said appeal, demanded of the said defendant and the said defendant agreed that it would deposit in money a sum sufficient to cover the postage upon such excess at the transient second-class rate, and thereupon said defendant did, in the month of April, 1906, deposit with the plaintiff a sum of \$4,200, and proceeded to mail 378,060 copies in excess of those to which it was lawfully entitled, upon which there was due and payable at the transient second-class rate of postage \$3,780.60, and afterwards, to wit, in the month of May, 1906, the defendant made a further deposit with the said plaintiff, through one Frank Wyman, postmaster in charge of the post office of the United States at said City of St. Louis, Mo., of \$4,350, and mailed 427,307 copies in excess of those to which it was lawfully entitled, upon which was due and payable at the transient second-class rate of postage the sum of \$4,273.07, and afterwards, to wit, in the month of June, 1906, the defendant made a further deposit of \$4,400 and mailed 435,831 copies in excess of those to which it was lawfully entitled, upon which was due and payable at the transient second-class rate of postage the sum of \$4,358.31, and afterwards, to wit, in the month of July, 1906, the said defendant made a further deposit of \$4,200 and mailed 306,144 copies in excess of those to which it was lawfully entitled, upon which was due and payable at the transient second-class rate of postage the sum of \$3,061.44, which said deposits as aforesaid, aggregating the sum of \$17,150, were in excess of the sums due and chargeable upon such mailings, to wit, \$15,473.42, by the sum of \$1,676.58, for which credit was duly given by the said plaintiff upon said account.

And the plaintiff says that afterwards, to wit, on or about the 1st day of August, 1906, the defendant, the Lewis Publishing Co., requested that, in lieu of money deposits sum sufficient to cover the deficiency in postage upon all copies of its said publication, the Woman's Magazine, in excess of the number held by the plaintiff, as postmaster, to be lawfully entitled to mailing at the pound rate of postage, its bond, with good and sufficient security, be accepted by the Postmaster General to cover the aggregate difference between the postage thereon at the pound rate and such rate as should be determined by the said department to be due and payable, and that said arrangement, so proposed, was consented to by the Postmaster General, and said Lewis Publishing Co. did, in pursuance thereof, by its certain writing obligatory, secure the payment of such difference, and thereupon the said Lewis Publishing Co., continued, as theretofore, to mail copies of its said publication, the Woman's Magazine, in excess of the number which the said defendant was lawfully entitled to mail at the pound rate of postage, but without pay upon such excess copies either the pound rate or any other rate of postage, and said defendant, the Lewis Publishing Co., did afterwards, to wit, at divers times from and

after said 1st day of August, 1906, and before the 5th day of March, 1907, offer for mailing and mailed a large number of copies of its said publication, the Woman's Magazine, to wit: In August, 1906, 420,455 copies, upon which the postage due at the transient second-class rate was \$4,204.55; in the month of September, 1906, 423,167 copies, upon which the postage due at the transient second-class rate was \$4,231.67; in the month of October, 1906, 395,145 copies, upon which the postage due at the transient second-class rate was \$3,951.45; in the month of November, 1906, 400,626 copies, upon which the postage due at the transient second-class rate was \$4,006.26; in the month of December, 1906, 348,136 copies, upon which the postage due at the transient second-class rate was \$3,481.36; in the month of January, 1907, 431,759 copies, upon which the postage due at the transient second-class rate was \$4,317.59; and in the month of February, 1907, 342,944 copies, upon which the postage due at the transient second-class rate was \$3,423.44, upon which said copies there became due and payable postage at the transient second-class rate to the amount of \$27,621.32, which said several sums, to wit, the sum of \$29,840.90, the difference between the transient second-class rate and the second-class pound rate for the mailings of such excess copies from the month of October, 1905, to the month of March, 1906, and the said sum of \$27,621.32 postage at the transient second-class rate upon such excess mailings for the month of August, 1906, down to and including the 5th day of March, 1907, remained due and payable, save only with respect to the credit of \$1,676.58 aforesaid, which said sums, less said credit, aggregate the sum of \$55,785.64, and less an additional credit of \$152.41 overpaid at the second-class pound rate, leaving a balance due the United States of \$55,633.23, which last-mentioned sum the said defendant became and was, under the statutes of the United States, liable to pay and ought to have paid plaintiff.

Whereby, by reason of the said last-mentioned sum of money, to wit, \$55,633.23, being and remaining wholly unpaid an action has accrued to the plaintiff to demand and have the said last-mentioned sum, residue of the sums aforesaid, of and from said defendant.

Yet the said defendant, although often requested so to do, has not yet paid the said sum of \$55,633.23, or any part thereof, but so to do has hitherto wholly refused and still refuses to the damage of the said plaintiff of \$55,633.23, and therefore it brings its suit.

2. And plaintiff sues the defendant for other money payable to the plaintiff by the said defendant for that the said defendant afterwards, to wit, on the 5th day of March, 1907, at the city of St. Louis, within the eastern division of the eastern district of Missouri, was indebted to the said plaintiff in the sum of \$55,633.23, for certain postal charges, postages, and duties then due and of right payable according to the form of the statute in such case made and provided, upon, for, and in respect of the mailing, posting, carriage, and transportation of divers copies of a certain printed paper or publication of the defendant entitled the "Woman's Magazine," which before that time had been mailed, posted, carried, and transported at and from the said post office at St. Louis, Mo., to be paid to the plaintiff by the said defendant when the said defendant should be thereunto afterwards requested.

Whereby and by reason of said last-mentioned sum of money being and remaining wholly unpaid, and by force of the statute in such case made and provided an action has accrued to the said plaintiff to demand and have of and from said defendant the said sum of \$55,633.23.

Yet the said defendant, although often requested so to do, has not yet paid said sum of \$55,633.23, or any part thereof, but so to do has hitherto wholly refused and still refuses to the damage of the said plaintiff of \$55,633.23, and therefore it brings its suit.

3. And the plaintiff sues the defendant for other money payable to the plaintiff by the said defendant for that, whereas, said defendant afterwards, to wit, on the 5th day of March, 1907, at the city of St. Louis, within the eastern division of the eastern district of Missouri, accounted with the said plaintiff, through said Frank Wyman, as postmaster of the United States in, for, and at the city of St. Louis, Mo., of and concerning divers other sums of money, before that time then due and owing in arrears and unpaid, from the said defendant to the said plaintiff in respect of the mailing, posting, carriage, and transportation of divers copies of a certain printed magazine or publication of the defendant, entitled the "Woman's Magazine," and upon that accounting the said defendant was found to be in arrears and indebted to the said

plaintiff in the further sum of \$55,633.23, to be paid by the said defendant to the said plaintiff when the said defendant should be thereunto requested.

Whereby and by reason of said last-mentioned sum being and remaining wholly unpaid, and by force of the statute in such case made and provided, an action has accrued to the said plaintiff to demand and have of and from the said defendant the said sum of \$55,633.23, according to the particulars of the demand hereunto annexed.

Yet the said defendant, although often requested so to do, has not yet paid said sum of \$55,633.23, or any part thereof, but so to do has hitherto wholly refused and still refuses to the damage of the said plaintiff of \$55,633.23, and therefore it brings its suit.

And the plaintiff claims the sum of \$55,633.23 besides interest and costs.

HENRY W. BLODGETT,

United States Attorney.

TRUMAN P. YOUNG,

Assistant United States Attorney.

(Indorsed: Filed November 5, 1907. James R. Gray, clerk.)

UNITED STATES OF AMERICA,

Eastern Division of the Eastern Judicial District of Missouri, ss:

I, James R. Gray, clerk of the Circuit Court of the United States, in and for the Eastern Division of the Eastern Judicial District of Missouri, do hereby certify that the writing hereto attached is a true copy of the petition in case No. 5516 of United States of America, plaintiff, v. The Lewis Publishing Company, defendant, as fully as the same remains on file and of record in said case in my office. And that the above-entitled cause is pending in this court.

In witness whereof, I hereunto subscribe my name and affix the seal of said court, at office in the city of St. Louis, in the eastern division of said district, this 10th day of January, in the year of our Lord 1911.

[SEAL.

JAMES R. GRAY,

Clerk of said Court.

(Indorsed:) No. 5516. United States Circuit Court. Eastern Division of the Eastern Judicial District of Missouri. United States of America against Lewis publishing Company. Duly certified copy of petition in the above-entitled cause.

EXHIBIT No. 34.

In the Circuit Court of the United States for the Eastern Division of the Eastern District of Missouri. The United States of America, plaintiff, v. The Lewis Publishing Co., a corporation, Edward G. Lewis, James F. Coyle (otherwise Jas. F. Coyle), and Theodore F. Meyer (otherwise Theo. F. Meyer), defendants. No. 5574.

DECLARATION.

The United States of America, plaintiffs in this suit, by Henry W. Blodgett, Esq., their attorney, in and for the Eastern District of Missouri, complain of the Lewis Publishing Co., a corporation created and existing under the laws of the State of South Dakota and a citizen of said State and having its principal office in and doing business within the State of Missouri and the Eastern Division of the Eastern Judicial District thereof, and Edward G. Lewis, James F. Coyle (otherwise Jas. F. Coyle), and Theodore F. Meyer (otherwise Theo. F. Meyer), citizens of Missouri and inhabitants of the Eastern Division of the Eastern District of Missouri aforesaid of a plea that the defendants render unto the plaintiffs the sum of \$39,321.82, which they owe and unjustly detain from the said plaintiffs, for that:

Whereas the said defendant, the Lewis Publishing Co., at the times hereinafter mentioned was conducting and publishing two, several, certain papers or publications, appearing at monthly intervals, entitled, respectively, The Woman's Magazine and The Woman's Farm Journal, for the first of which said publications to wit. The Woman's Magazine, the said defendant had made

application for entry to the mails of the United States as second-class matter, at the second-class rates of postage, and had obtained, pending the consideration of and decision upon said application, a temporary permit authorizing such publication to be mailed at said rates at the United States post office at the city of St. Louis in the State of Missouri; and the other of which publications, to wit; The Woman's Farm Journal had been entered as second-class matter at the United States post office at the city of St. Louis in the State of Missouri, and a certificate of entry duly issued authorizing the same to be admitted to the United States mails at the second-class rates of postage, by means whereof the said defendant was authorized, by virtue of said temporary permit for The Woman's Magazine, and said certificate of entry for The Woman's Farm Journal to mail at the United States post office at the city of St. Louis in the State of Missouri, at one of the said second-class rates, to wit: The second-class rate of 1 cent a pound or fraction thereof, copies of said respective publications to such persons as constituted the legitimate list of subscribers to each of them respectively, to news agents engaged in business as news dealers or sellers of second-class publications, to other publications admitted to the second class of mail matter exchanging in good faith copy for copy with the respective publications aforesaid, and in addition thereto sample copies to a number not greater than the aggregate number of such copies sent, at each issue of said respective publications to regular subscribers to the same; and

Whereas the said defendant, the Lewis Publishing Co., at and before the time of the making of the writing obligatory hereinafter mentioned, was offering and was purposing to offer from time to time at the said post office at St. Louis, Mo., for transmission in the mails as second-class matter, a large number of copies of its said periodical publications entitled, respectively, The Woman's Magazine and the The Woman's Farm Journal, all of which said copies were represented by said company to be such copies of the said publications as it was entitled by law to mail at the second-class postage rate of 1 cent a pound; and whereas Frank Wyman, postmaster of the United States at St. Louis, Mo., had held that the copies of said publications so offered and purposed to be offered were largely in excess of the number of copies of the same which said defendant, The Lewis Publishing Co., was entitled to mail at the second-class postage rate of 1 cent a pound, to wit, in excess of 539,901 copies of the said publication, The Woman's Magazine, mailed as to subscribers and sample copies to a number equal to said subscribers' copies, and in the case of The Woman's Farm Journal in excess of 141,328 copies of the said publication, The Woman's Farm Journal, mailed as to subscribers and sample copies to a number equal to said subscribers' copies and said postmaster was then and there demanding and proposing to continue to demand upon such alleged excess copies the transient second-class rate of postage of 1 cent for each 4 ounces or fractional part thereof, as provided by the act approved June 9, 1884, chapter 73, and whereas from said rulings and demands of said postmaster at St. Louis, Mo., said defendant, The Lewis Publishing Co. had appealed to the Post Office Department, whereof George B. Cortelyou was then and until after the making of the writing obligatory hereinafter mentioned, remained the executive head and Postmaster General, and the said Postmaster General authorized pending the decision on said appeal the said postmaster at St. Louis to accept from the said defendant company, from and after the 1st day of August, 1906, for transmission in the mails at the second-class postage rate of 1 cent a pound copies of said publication so held by said postmaster to be in excess of the number legally mailable at said rate whereby it became necessary to secure to the United States by a deposit of money or otherwise, in respect of all such copies of The Woman's Magazine and The Woman's Farm Journal, deposited by the said defendant company in the St. Louis post office for transmission from and after the 1st day of August, 1906, as might thereafter be determined by the Post Office Department, in the consideration and decision of said appeals of the defendant company not to have been entitled by law to be mailed at such second-class postage rate of 1 cent a pound, payment of the difference between the aggregate postage upon such copies at said rate of 1 cent a pound and the aggregate postage at such rate as might be determined to be due and payable thereon, and whereas, the said Lewis Publishing Co. requested that, in lieu of money deposits in sums sufficient to cover the deficiency in postage upon all copies of its said respective publications mailed by it at the post office at St. Louis, Mo., which the Post-Office Department should thereafter determine not to have been mailable at such postage rate of 1 cent a

pound, its bond with good and sufficient surety be accepted by the Postmaster General and the said Postmaster General consented to the arrangement so proposed:

In pursuance whereof, the defendant, The Lewis Publishing Co., principal, and the defendants Edward G. Lewis, James F. Coyle, by the name of Jas. F. Coyle, and Theodore F. Meyer, by the name of Theo. F. Meyer, as sureties, then and there, to wit, on the 9th day of August, A. D. 1906, by their certain writing obligatory sealed with the respective seals of the said defendants and now herein shown to the court, the date whereof is a certain day and year therein mentioned, to wit, the same day and year last aforesaid, acknowledged themselves held and firmly bound unto the United States of America in the just and full sum of \$50,000 lawful money of the United States to be paid to the said United States of America, to the payment whereof well and truly to be made and done they bound themselves, their successors, heirs, and legal representatives, which said writing obligatory was and is subject to a certain condition thereunder written, that if the above bounden, The Lewis Publishing Co. as principal and Edward G. Lewis, James F. Coyle, and Theodore F. Meyer as sureties, shall well and truly pay to the United States in respect of all copies of The Woman's Magazine and The Woman's Farm Journal which should have been accepted and transmitted in the mails by the postmaster at St. Louis, Mo., from and after the 1st day of August, 1906, and should be determined by the Post Office Department not to have been entitled by law to be mailed at the second-class postage rate of 1 cent a pound, the aggregate difference between the postage thereon at said rate and at such rate as should be determined by said department to be due and payable, then such obligation aforesaid should be void, otherwise to remain in full force and virtue.

And whereas the said defendant, The Lewis Publishing Co., afterwards, to wit, at divers times from and after said 1st day of August, 1906, and before the 5th day of March, 1907, offered for mailing at said second-class pound rate of postage a large number of copies of said publication, The Woman's Magazine, to wit, 2,762,132 copies, in excess of the number of copies thereof held and determined by said postmaster to be lawfully transmissible at the pound rate of postage; and the said defendant company afterwards, to wit, at divers times from and after said 1st day of August, 1906, and before the 5th day of March 1907, offered for mailing at said second-class pound rate of postage, a large number of copies of said publication, The Woman's Farm Journal, to wit, 1,968,413 copies, in excess of the number of copies thereof held and determined by said postmaster to be lawfully transmissible at the pound rate of postage, all of which said copies, as well of The Woman's Magazine as of The Woman's Farm Journal, were accepted by said postmaster, under the instructions and by virtue of the bond aforesaid for mailing as aforesaid, and for transmission in the mails of the United States, and were duly transmitted through the same.

And afterwards, to wit, on the 4th day of March, 1907, the Post Office Department, in the consideration and decision of said appeal of the said defendant, the Lewis Publishing Co., from the rulings and demands of the said postmaster as aforesaid, found, held, decided, and determined that the said defendant, the Lewis Publishing Co., was entitled to mail at the pound rate of postage 539,901 copies of the said Woman's Magazine as to subscribers thereto, and an equal number of sample copies; and that the said defendant, the Lewis Publishing Co., was entitled to mail at the pound rate of postage 141,328 copies of the said Woman's Farm Journal as to subscribers thereto, and an equal number of sample copies; and that all copies of said respective publications, in excess of the numbers so found and determined, as aforesaid, and all sample copies in excess of the number equal thereto were chargeable at the transient second-class rate of postage, to wit, the rate of 1 cent for each 4 ounces or fractional part thereof, prepaid by stamps affixed, and the action of the said Wyman in demanding and collecting postage at the transient second-class rate on all copies so in excess was sustained; whereby there became due and payable to the United States upon 2,762,132 copies of The Woman's Magazine postage at the transient second-class rate to the amount of \$27,621.32, less the amount \$4,752.52, payable on the said copies at the pound rate of postage; and whereby also there became due and payable to the United States upon said excess copies of The Woman's Farm Journal postage at said transient second-class rate to the amount of \$19,684.13, less the amount of \$3,231.10, due on the said copies at the pound rate of postage, and the plaintiffs say that the aggregate difference between the postage upon said excess copies of The Woman's Magazine at said pound rate and at such rate as was determined by said department to be due and payable, to wit, the

transient second-class rate, was \$22,868.79, and that the aggregate difference between the postage upon said excess copies of *The Woman's Farm Journal* at said pound rate and at such rate as was determined by said department to be due and payable, to wit, the transient second-class rate, was \$16,453.03, and that the total aggregate difference between the postage upon the two said publications, *The Woman's Magazine* and *The Woman's Farm Journal*, in respect of said excess copies in said condition in said writing obligatory mentioned, was the sum of \$39,321.82, and the said defendants did not well and truly pay to the United States said aggregate difference between said pound rate and such rate as was determined by the Post Office Department to be due and payable, but said sum, representing such aggregate difference, became, and was, and still is, due and owing from the defendants to the plaintiffs; whereby, an action has accrued to the plaintiffs to demand and have of the said defendants the sum of \$39,321.82.

Yet neither the said defendant, the Lewis Publishing Co., nor the said Edward G. Lewis, James F. Coyle, nor the said Theodore F. Meyer (although often requested so to do), has paid the said sum of \$39,321.82 above demanded or any part thereof to the said plaintiffs, but have and each of them has hitherto wholly neglected and refused, and they still neglect and refuse, and each of them neglects and refuses so to do, to the damage of said plaintiffs in the sum of \$39,321.82, besides interest and costs, and therefore they bring their suit.

And the plaintiffs claim the sum of \$39,321.82, besides interest and costs.

HENRY W. BLODGETT,
Attorney for the Plaintiffs.

(Indorsed:) Filed July 31, 1907. James R. Gray, clerk.

UNITED STATES OF AMERICA,

Eastern Division of the Eastern Judicial District of Missouri, ss:

I, James R. Gray, clerk of the circuit court of the United States, in and for the eastern division of the eastern judicial district of Missouri, do hereby certify that the writing hereto attached is a true copy of petition in case No. 5474 of *The United States of America, plaintiff, v. The Lewis Publishing Co. et al., defendants*, as fully as the same remains on file and of record in said case in my office. And that above-entitled cause is pending in this court.

In witness whereof, I hereunto subscribe my name and affix the seal of said court at office in the city of St. Louis, in the eastern division of said district, this 10th day of January, in the year of our Lord 1911.

[SEAL.]

JAMES R. GRAY, *Clerk of said Court.*

(Indorsed:) No. 5474. United States circuit court, eastern division of the eastern judicial district of Missouri. *The United States of America against The Lewis Publishing Co. et al.* Duly certified copy of petition in the above-entitled cause.

Upon this decision, and this state of the law and facts, the Department of Justice, through the United States district attorney at St. Louis, under date of July 7, 1907, instituted suit against the publishing company to recover on its \$50,000 bond an additional \$39,321.82 excess postage on alleged excess copies mailed while the decision on the appeal was being held up in the department.

Under date of November 5, 1907, the Department of Justice, through the United States district attorney at St. Louis, instituted two suits against the publishing company to recover excess postage at the rate for "others than the publisher" on alleged excess mailings, the evidence of which was the Postmaster General's decision of March 4, 1907.

The first of these latter suits applied to the *Woman's Farm Journal* and the second to the *Woman's Magazine*. They were to collect excess postage on alleged excess mailings between October, 1905, and April, 1906, when the postmaster made his first demand for the deposit of money.

Mr. AUSTIN. What has become of those cases, Mr. Madden?

Mr. MADDEN. They are still standing. Returning now to the Postmaster General's letters of March 4 to the St. Louis postmaster, sustaining his ruling, the following is quoted from them; the first applies to the Woman's Farm Journal, and the second to the Woman's Magazine:

In the matter of your recommendation that the department revoke the order granting second-class mailing privilege to this publication, you are informed that upon a hearing granted the publisher on the same date (Apr. 30 and May 1, 1906), and upon a careful and thorough investigation of all of the evidence by the department, I find that the publication does not have a legitimate list of subscribers; that it is designed and published primarily for advertising purposes; and that it is being circulated at a nominal rate, contrary to the law and the regulations of the department.

You will therefore refuse hereafter to accept for mailing at the second-class rate of postage copies of the said publication, and inform the publisher that the second-class mailing privilege heretofore extended the Woman's Farm Journal is withdrawn, and that the order granting the same is revoked.

Mr. AUSTIN. What was the annual subscription price of that publication?

Mr. MADDEN. Ten cents.

Mr. AUSTIN. Fifty-two copies?

Mr. MADDEN. No; 12 copies.

Mr. AUSTIN. A monthly?

Mr. MADDEN. Yes; about a cent apiece.

Mr. AUSTIN. The cheapest paper in the United States?

Mr. MADDEN. No; there are others, some cheaper than that.

Mr. AUSTIN. Is that the nominal price?

Mr. MADDEN. I do not say it is nominal.

Mr. AUSTIN. That is one of the requirements of the law, is it not, in order to obtain second-class privileges?

Mr. MADDEN. Rendered obsolete by practice.

Mr. BRITT. Did I understand you to say that the statute has been rendered obsolete?

Mr. MADDEN. I mean to say that the term is not used. There is no use going over all that. You understand what I mean.

Mr. BRITT. No, I did not understand what you meant, or I would not have asked you.

Mr. AUSTIN. You stated what the regular subscription price was. Tell us if the record does not show that the paper was sold for much less than that.

Mr. MADDEN. No, sir; it does not.

Mr. AUSTIN. The record does not show that?

Mr. MADDEN. No, sir. The postmaster, in his reports, and the inspectors tried to make that out; but the trouble is that they did not understand the subject at all, and did not know what they were talking about, as a matter of fact. They talked about 5-cent clubs and 6-cent clubs, and so on. All that meant was this, that Lewis would say to a person: "Get me 50 subscribers, and I will give them to you at 5 or 6 cents apiece." And that meant simply that he paid that few cents off each subscription as a commission to the party; not that he reduced the rate to the subscriber, for he did not.

Mr. AUSTIN. I knew it had appeared somewhere here—the question of 5 cents.

Mr. MADDEN. Yes; because it was an entire misconception. In their eagerness to make a case they misconceived the whole proposition.

In the matter of your recommendation that the department deny the pending application, submitted August 22, 1902, for entry of this publication as second-class matter, you are informed that upon a hearing granted the publisher on the same dates (Apr. 30 and May 1, 1906), and upon a careful and thorough investigation of all of the evidence by the department, I find that the publication does not have a legitimate list of subscribers; that it is designed and published primarily for advertising purposes; and that it is being circulated at a nominal rate, contrary to the law and the regulations of the department.

You will, therefore, refuse hereafter to accept for mailing at the second-class rate of postage copies of the said publication, and inform the publisher what his application for entry of the Woman's Magazine as second-class matter is denied.

MR. BRITT. May I ask before whom that application was pending for nearly five years?

MR. MADDEN. The acceptance of publication was the grant of entry.

MR. BRITT. Let me insist upon an answer to a respectful question. Before what official was that application pending?

MR. MADDEN. Of course, it was in the third assistant's office.

MR. BRITT. And who was the third assistant?

MR. MADDEN. I was third assistant at that time.

MR. BRITT. That is what I am asking.

MR. MADDEN. That is wholly unimportant, as will appear later.

MR. BRITT. It is not for you to determine whether my questions are important. It is wholly important that this committee should know, as I take it, every fact in this case.

MR. MADDEN. Oh, yes; that is all right.

Following the directions in these four paragraphs, quoted from the Postmaster General's two letters of March 4, the St. Louis postmaster denied the Woman's Magazine and the Woman's Farm Journal the mails at publishers' rates.

The printing and publishing plant was now closed down. Hundreds of people were thrown out of employment. The subscription contracts made by the company and admitted by the Postmaster General to exist in the case of the first magazine to the extent of 539,901, and in the second to the extent of 141,328, could not now be fulfilled, the third-class rate being prohibitive.

This action of the Postmaster General follows the two years' industrious campaign of official circularization of the patrons of the company throughout the country, making mysterious inquiries as to their business relations and transactions with the company, and the publication in a St. Louis newspaper of large circulation, to be copied generally, of the post-office inspector's "confidential" report to the department on an "exhaustive inquiry into the publication methods of the Lewis Publishing Co."

One feature of this campaign was the causing of the letter carriers throughout the country when making delivery of the publishing company's mail matter to stop and inquire of persons to whom the matter was addressed whether they were subscribers, the nature of their subscriptions, how paid for, for what length of time, and whether the publications were being received regularly, etc.; all the while seeming to invite complaints.

There is submitted herewith, to appear later, about 12 compared copies of the circular letters sent out from the post office by the St.

Louis postmaster from time to time during this official campaign. Some are undated, some have only the year upon them, but the majority are dated. Special attention is directed to the one dated September 21, 1906. This is a communication "Personal, to my brother postmasters." It says:

The department has before it a case of unusual gravity, and while you may have before received similar letters, it is of paramount importance that you respond to this one, as its relation to the case is more vital than any others.

I, therefore, strenuously urge that a careful and prompt response be sent me with the fullest possible information, as I am following the department's directions, and am compelled to seek your aid as stated.

July 12, 1905 the Postmaster General turned the case back to be handled by the Third Assistant along the usual lines; October 4, the Third Assistant declined to have anything more to do with it; April 14, 1906, the Postmaster General sent it back again to the Third Assistant, and here is your postmaster saying that he is acting under the directions of the department, and meaning the Postmaster General—for he was not acting under the directions of the Third Assistant.

At the bottom of this astounding letter is the form for the postmaster to whom it is addressed to respond with the information called for. This information is to be secured from persons who have acted as agents in securing subscribers for the publishing company's magazines. Names and addresses of subscribers secured by these agents are furnished, and detailed information is called for as to how they were secured, the time covered by the subscriptions, the amount remitted, how the remittance was made, and the nature of the compensation to the agents.

These documents constitute important evidence of the nature and character of the official campaign to secretly discredit the company with the general public, and the extraordinary official surveillance of the minutest detail of its business transactions.

Turning back now for a moment for the purpose of completing the record, I submit here as an exhibit a compared copy of the affidavit made December 9, 1905, by eight persons connected with the Lewis Publishing Co., concerning the mailing and treatment of 3,000 letters deposited in the St. Louis post office by the Lewis Publishing Co. December 1, 1905. With this affidavit there are three copies of a printed circular letter the company sent out December 5 to the persons to whom the 3,000 letters were addressed, informing them that the company had reason to believe the letters sent them had been tampered with in the post office. The parties addressed were asked to advise the company of the date of the receipt of their respective letters. The affidavit and the other papers in this exhibit explain themselves.

According to the affidavit, the letters were deposited in the St. Louis post office Friday evening, December 1, 1905. They bear postmarks of December 2, 1905, 1 a. m. One of them addressed to Theodore J. Dresen, Chicago, less than a day's ride distant, was delivered, according to the addressee's statement, on December 6, five days after it was posted. One of them was addressed to Emma Eldridge, Bedford, Ind., less than a day's ride from St. Louis. According to her statement, it was delivered December 6, five days after it was posted. One was addressed to Joseph Ebeling,

St. Louis, Mo., the same city in which it was mailed. According to the statement of Ebeling, it was delivered December 6, five days after it was posted.

Mr. AUSTIN. Is there any evidence that those letters were tampered with—that they were delayed in delivery?

Mr. MADDEN. They were delayed in delivery.

Mr. MCCOY. Is there any record to show how many of the 3,000 letters were subjected to the same delay in delivery?

Mr. MADDEN. All of them, I believe; the entire 3,000.

Mr. MCCOY. You mean that the entire 3,000 were delivered at intervals of about five days from the time of mailing?

Mr. MADDEN. Yes, sir; I have not the record in the case, but I remember distinctly this much—and the record in the department will bear me out—

Mr. MCCOY. Is there proof of any kind, anywhere, to show how many of those letters were delayed for any such period?

Mr. MADDEN. The answers of the persons addressed, I think the record will show, if we get down to that—

Mr. MCCOY. There are the answers from these various people on record out there?

Mr. MADDEN. Yes, sir.

Mr. MCCOY. That is all.

Mr. MADDEN. I brought just three of them with me as samples.

Mr. MCCOY. I just wanted to know where the proof was; that is all.

Mr. MADDEN. They are all there. You asked me if there was any evidence of tampering.

Mr. AUSTIN. Or delayed letters.

Mr. MADDEN. The evidence of the delay is what I have read, the statements of the people who received them. I considered that there was some evidence of tampering. If you remember, I read a letter from the postmaster at St. Louis, dated April 27, 1906, in which letter he says that in letters and in articles signed by Lewis these officials are vilified and charged with being conspirators, etc. How did he know the contents of Lewis's sealed letters if they were not tampered with?

Mr. AUSTIN. Some of the parties to whom they were addressed may have sent them in.

Mr. MADDEN. Of course, they may have.

Mr. AUSTIN. They may have struck the wrong man.

Mr. BRITT. I will merely state on behalf of the department that it appears from the records that the postmaster did hold some of these letters under the belief that they were fraudulent, and asked the department for instructions; and that the documentary evidence will be put into the record showing that the department immediately directed him that he had no right to hold them, that they were entitled to transmission.

Mr. MADDEN. I am very sure that is right.

Mr. BRITT. Using the telegraph instead of the mails for it.

Mr. MADDEN. I am very sure that is right.

Mr. MCCOY. That simply proves the fact; that is all.

Mr. BRITT. I wanted to state that to the committee. It is sometimes helpful to understand the facts in advance, and it is for that reason I inject those statements in here.

Mr. McCox. I think that whenever you can put in evidence anything in the way of a statement from the department to which there is no matter of argument at all, if it is connected with the matter he is testifying to, it does help. We would get it all together, and we do not have to hunt all through the record.

Mr. BRITT. I do not do it to provoke argument, but to assist in the elucidation of the case.

Mr. MADDEN. I happened to remember the case from this; I remember receiving a telegram from Lewis charging that letters had been held up, and I simply transmitted it to the First Assistant, and I think the First Assistant advised me later that the postmaster was ordered to release the letters.

These are sample responses received by the publishing company from persons to whom the circular of inquiry was addressed. A large number of such responses are on file in the company's office. Substantially, the responses are all the same. The affidavit with the sample papers just referred to are submitted as Exhibit No. 35.

EXHIBIT No. 35.

Address on envelope: Theodore J. Dresen, 128 Iowa Street, Chicago, Ill.

Postmark: St. Louis, Mo., December 2, 1905, 1 a. m.

Postmark of receiving office: Chicago, Ill., December 6, 1905, 10 a. m. Received, Carpenter Street station.

Notation: This is the envelope in which my certificate of stock was received. I return same to you that you may see for yourself the length of time it took to reach me.

[The Woman's Farm Journal, circulation, 600,000 copies each issue; The Woman's Magazine, circulation, 1,500,000 copies each issue. E. G. Lewis, president; H. W. Kramer, first vice president; Edw. Dickinson, second vice president; F. V. Putnam, treasurer; F. J. Cabot, secretary. Capital, \$3,500,000.]

THE LEWIS PUBLISHING CO.,
St. Louis, December 5, 1905.

DEAR FRIEND: On December 1 we mailed you your certificate of stock in the Lewis Publishing Co. We have reason to believe that this mail has been tampered with. Please fill in the blank space below and return this letter in the inclosed envelope at once.

Very truly,

THE LEWIS PUBLISHING CO.

Have you received a letter from the Lewis Publishing Co., mailed December 1, addressed to you, and containing your certificate of stock in The Lewis Publishing Co.? Yes. Answer yes or no.

THEODORE J. DRESEN.
(Sign your name here.)
128 Iowa Street, Chicago, Ill.
(Address.)

(Date) DECEMBER 6, 1905.

Be sure and fill in the date of your reply and mail this letter back to us in the inclosed envelope at once.

Address on return envelope: E. G. Lewis, president of The Woman's Magazine, St. Louis, Mo.

Postmark: Bedford, Ind., December 7, 1905, 1 p. m.

Postmark of receiving station: St. Louis, Mo., December 7, 1905, 11 p. m.

Address on envelope: Miss Emma Eldridge, northwest corner Sixteenth and L Streets, Bedford, Ind.

Postmark: St. Louis, Mo., December 2, 1905, 1 a. m.

Postmark of receiving station: Received Bedford, Ind., December 6, 1905, 7 a. m.

Notation: This corner was torn off, as you see, when I received it. I generally open a letter at the end, but this was so lightly sealed in one place that it opened itself. I made the remark when I received it, "This has undoubtedly been opened," and I was mad for an hour. This is not the first time my mail has come to me in this condition. Please send me a form of what you want me to write to our Congressman, and I will gladly do so. You have my sympathy in your trouble. E. E.

THE LEWIS PUBLISHING CO.,
St. Louis, Dec. 5, 1905.

DEAR FRIEND: On December 1st we mailed you your certificate of stock in the Lewis Publishing Co. We have reason to believe that this mail has been tampered with. Please fill in the blank space below and return this letter in the inclosed envelope at once.

Very truly,

THE LEWIS PUBLISHING CO.

Have you received a letter from the Lewis Publishing Co. mailed December 1st addressed to you and containing your certificate of stock in the Lewis Publishing Co.? Yes. Answer yes or no.

MISS EMMA ELDRIDGE,
[Sign your name here.]
Northwest corner *Sixteenth and L Streets*,
Bedford, Ind.

Dec. 7, 1905.
[Date.]

[Address.]

Be sure and fill in the date of your reply and mail this letter back to us in the inclosed envelope at once.

I returned the two receipts pinned together on December 6.
Postmark: St. Louis, Mo., Dec. 6, Tr 4, by way north circuit.
Address on return envelope: E. G. Lewis, President of The Woman's Magazine, St. Louis, Mo.

THE LEWIS PUBLISHING CO.,
St. Louis, Dec. 5, 1905.

DEAR FRIEND: On December 1st we mailed you your certificate of stock in the Lewis Publishing Co. We have reason to believe that this mail has been tampered with. Please fill in the blank space below and return this letter in the inclosed envelope at once.

Very truly,

THE LEWIS PUBLISHING CO.

Have you received a letter from the Lewis Publishing Co. mailed December 1st addressed to you and containing your certificate of stock in The Lewis Publishing Co.? Yes. Answer yes or no.

JOSEPH M. EBELING,
[Sign your name here.]
3202 North *Nineteenth Street*.
[Address.]

12/6,
[Date.]

Be sure and fill in the date of your reply and mail this letter back to us in the inclosed envelope at once.

Postmark: St. Louis, Mo., Dec. 2, 1905, 1 a. m.
Address on envelope: Joseph M. Ebeling, 3202 No. Nineteenth Street, St. Louis, Mo.

In the Post Office Department of the United States. In the matter of the detention of first-class mail of the Lewis Publishing Co.

St. Louis, Mo., December 9, 1905.

We, the undersigned, on the evening of Friday, December 1, 1905, carefully sealed more than 3,000 letters containing certificates of stock of the Lewis Publishing Co. addressed to stockholders, minutely examining each envelope, in order that there could be no question as to their being firmly sealed. Said 3,000 letters were placed by us in Government mail sacks and deposited at the mail box, corner of Delmar Avenue and Adelaide about 10.45 p. m., December 1, 1905. Said sacks were taken up in full view by the mail clerks on the United States mail car on its arrival at said box, Friday, December 1, 1905,

at 11.30 p. m. Included in said 3,000 letters so mailed, were letters similar as respecting their inclosing envelopes, to the balance of said 3,000 letters, but addressed to certain employees in St. Louis, notably L. H. Potter, Euclid Avenue, and Anna Tierney, Woman's Magazine Building, and that among said letters were also letters addressed to the following people:

W. D. Kelley, Omaha, Nebr.	Wm. S. Ellison, Kankakee, Ill.
Theo. J. Dresen, Chicago, Ill.	Mary Ellison, Kankakee, Ill.
Herman Elsenbach, Oconto, Wis.	J. H. Hettinger, St. Charles, Mo.
Mrs. C. W. Hall, Marcellus, Mich.	E. G. Hammonds, Hastings, Nebr.
Mary M. Halre, Chicago, Ill.	Emma C. H. Chapman, Geneva, N. Y.
Mrs. W. E. Dienbar, Elkhorn, Wis.	Nellie C. Fisher, Evansville, Ind.
Jacob A. Krehbiel, Donnellson, Iowa.	Geo. A. De Long, Carterville, Ill.
Wm. Hamilton, Naples, Ill.	G. E. Dahlstrom, Rockford, Ill.
Joseph M. Ebeling, St. Louis, Mo.	Mrs. I. M. Houch, Tiffin, Ohio.
Marion D. Henderson, Pleasant Plains, Ill.	Elizabeth P. Dudley, Morrow, Ohio.
Wm. P. Henrich, Mascoutah, Ill.	Emma Granum, Chicago, Ill.
Mrs. A. Gerken, Millstadt, Ill.	Chas. O. Holmberg, Chicago, Ill.
Emma Eldridge, Bedford, Ind.	E. F. Farnsworth, Shamokin, Pa.
Mrs. H. W. Hooper, Williamsport, Pa.	Mrs. Will H. Crittenden, Cazenovia, N. Y.

The envelopes so addressed having been returned by the addressees to the Lewis Publishing Co. have been examined by us respecting their postmarks and show thereby that said letters were detained in the St. Louis post office from four to five days beyond the usual time necessary to deliver mail so addressed. The purpose of said case in mailing and the recovery afterwards of the postmarked envelopes being to detect any such tampering with said 3,000 letters, as to our knowledge and belief such unlawful interference with the mail of said Lewis Publishing Co. and its employees has been of frequent previous occurrence, it therefore being desirable to procure incontrovertible evidence of such oppression, illegal and unwarranted acts on the part of persons unknown to us in the St. Louis post office.

G. A. ARBOGAST.
CARL J. MCCARTHY.
F. V. PUTNAM.
LOUIS H. POTTER.

F. J. CABOT.
W. C. WOODS.
IRL HEAPES.
GEO. J. AIHRENS.

Sworn to and subscribed to before me, a notary public within and for the county of St. Louis, State of Missouri, this 9th day of December, 1905, by the persons whose names are attached to the foregoing instrument.

[SEAL.]

CORA M. CLAWSON,

Notary Public within and for the County of St. Louis, Mo.

My commission expires October 20, 1908.

(Compared copy.)

The nature of and the extent of the tampering, if any, with the publishing company's letter mail throughout the period of this official campaign is not known. There was constant reason to believe that both the outgoing and incoming letter mail was tampered with.

Mr. ARSTIN. You say there was tampering; have you any proof?

Mr. MADDEN. Yes, sir; I will give it to you right now. Here is an affidavit which I will read.

(Mr. Madden read the following affidavit:)

COUNTY OF ST. LOUIS, *State of Missouri*, ss:

Alma Z. Moore, being of lawful age, deposes and on oath says: That she is officially connected with the so-called Lewis enterprises, located at University City, St. Louis County, Mo.; that she is in charge of the field organization department of the American Woman's League, with headquarters at University City, St. Louis County, Mo.; that she has occasion to send out in the mails a great many letters concerning business in her charge; that she has suffered much annoyance and irritation due to the meddling with her correspondence after its having been placed in the mails and before delivery to parties addressed; that at least as many as 30 of her correspondents have within the last 60 days notified her that at the time of delivery of her letters to them same had been opened or tampered with; that this condition of tampering with the

mail matter has become general in connection with the use of the mails by her department.

ALMA Z. MOORE.

Subscribed and sworn to before me, a notary public in and for the county of St. Louis, State of Missouri, this 1st day of July, 1911.

[SEAL.]

D. COHEN,

Notary Public, St. Louis County, Mo.

My commission expires March 21, 1915.

Mr. AUSTIN. Who prepared that affidavit?

Mr. MADDEN. I did.

Mr. McCoy. Do you know, Mr. Madden, whether this affiant has in her possession, as an employee of the company, any of these letters of complaint?

Mr. MADDEN. Yes, sir; she has them.

Mr. McCoy. She has those?

Mr. MADDEN. It is this way—

Mr. McCoy. I just want to know that fact. Make a minute to produce those, will you?

Mr. MADDEN. Yes; I asked her this when she told me that, "Can you produce the letters of complaint you have?" She said 60 first, and I think I induced her to reduce it to 30, to be sure. She receives a vast amount of correspondence, and the letters written by these women in there cover a multitude of subjects. Sometimes they are 8 or 10 pages long, and there will be just one sentence in the letter stating "Your letter to me was opened." And she said she never set them apart, never made any particular note of them, because it was so common. But the letters are there in the files, if they can be segregated from others.

Mr. McCoy. I did not mean to produce all of them, but any substantial number. Those letters which this lady swears were tampered with were mailed with 2-cent postage, were they?

Mr. MADDEN. Yes, sir; under seal.

Mr. McCoy. First-class mail?

Mr. MADDEN. Yes, sir.

Mr. AUSTIN. She said she would tell you that this letter had been opened, not tampered with?

Mr. MADDEN. No; opened or tampered with, the affidavit said.

Mr. AUSTIN. The affidavit uses the word "tampered," does it not?

Mr. MADDEN [reading]:

That at least as many as 30 of her correspondents have within the last 60 days notified her that at the time of delivery of her letters to them same had been opened or tampered with.

(Thereupon, at 5 o'clock p. m., the committee adjourned until tomorrow, Saturday July 15, 1911, at 10 o'clock a. m.)



LEWIS PUBLISHING COMPANY

No. 14

HEARINGS

BEFORE THE

**COMMITTEE ON EXPENDITURES IN THE
POST OFFICE DEPARTMENT**

HOUSE OF REPRESENTATIVES

ON

**HOUSE RESOLUTION NO. 109
TO INVESTIGATE THE POST OFFICE
DEPARTMENT**

JULY 15 AND 17, 1911



**WASHINGTON
GOVERNMENT PRINTING OFFICE
1911**

**COMMITTEE ON EXPENDITURES IN THE POST OFFICE DE-
PARTMENT.**

HOUSE OF REPRESENTATIVES.

[Committee room, room 203, House Office Building. Telephone 589. Meets on call.]

WILLIAM A. ASHBROOK, Ohio, *Chairman.*

JOSHUA W. ALEXANDER, Missouri.

RICHARD W. AUSTIN, Tennessee

WILLIAM C. REDFIELD, New York.

C. BASCOM SLEMP, Virginia.

WALTER I. MCCOY, New Jersey.

HORACE M. TOWNER, Iowa.

ERNEST CORNELL, *Clerk.*

LEWIS PUBLISHING CO.

COMMITTEE ON EXPENDITURES IN THE
POST OFFICE DEPARTMENT,
HOUSE OF REPRESENTATIVES,
Saturday, July 15, 1911.

The committee met at 10 o'clock a. m., Hon. Joshua W. Alexander (acting chairman) presiding.

The following members of the committee were present: Messrs. Alexander, McCoy, Austin, and Towner.

Mr. ALEXANDER. Mr. Madden, you may proceed with your statement.

Mr. MADDEN. Mr. Chairman, taking up the story where I left off yesterday, in this instance we have indisputable proof that 3,000 letters, mailed December 1, 1905, were held up at least four days in the St. Louis post office. This was for some purpose, and the reasonable assumption is that it was to be opened and examined, if not confiscated like the magazine mail.

Mr. AUSTIN. Are you going to present that evidence?

Mr. MADDEN. Yes, sir; it is in the record as an exhibit.

Congress, intending to protect users of the mails from such official conduct, enacted a statute (R. S., sec. 3890) making it a penal offense for a postmaster to so "detain" any letters. This holdup of the letter mail of the publishing company, and the holdup of 300,727 copies of the magazine mail, as already shown, are the only two instances of which we are able to submit evidence at this hearing.

These holdups were in the very teeth of the law of Congress, forbidding them under severest penalty—fine, imprisonment, and legal disqualification for office forever after.

The Postmaster General's action of March 4, 1907, excluding both magazines from the mails, following as it did such a persistent and industrious two years' campaign of circularization of the company's patrons, the holding up of its mail matter, etc., as the record now shows, was a climax in the purpose to ruin the business, credit, good will, and fair fame of the Lewis Publishing Co. with the public, for now the company was forced to default upon its hundreds of thousands of subscription contracts and cancel all its advertising contracts.

Before the official campaign against the company began in March, 1905, its income was approximately \$850,000 a year. This had steadily diminished from the beginning under the influence of the governmental assault; but now, after March 4, with the publications shut out of the mails, all income was cut off. The wreck of the Lewis Publishing Co. seemed to be complete.

On its face, the Postmaster General was performing a duty imposed upon him by law. That was not so. As a matter of truth, if such a

decision were required by the Post Office Department, it was the function of the Third Assistant. As a matter of protection from injury to the users of the mails from mistake, error, or any improper decision by a subordinate official, the regulations provide for an appeal to the Postmaster General. There was no appeal.

Mr. AUSTIN. Now, Mr. Madden, the postmaster there at St. Louis, acting under the regulations, held up those papers. Whose right was it to appeal that? You say that no appeal was taken. Was it not the publisher's duty to appeal from the acts of the postmaster?

Mr. MADDEN. I am not talking about the holding up of the publications now. I am talking about the exclusion of the publications from the mails altogether.

It is important, in order to appreciate what the Postmaster General says in a letter next to be placed in the record, to subject the statements in his March 4, 1907, letters, ruling the two publications out of the second class, to scrutiny and analysis. He says, in the case of each publication, that his action was taken after a hearing granted the publisher on April 30 and May 1, 1906. On those dates the company was heard, but not, as the record shows, by the Postmaster General. The hearing was before the Third Assistant. The matter upon which the hearing was conducted was the simple numerical question of how many subscribers there were for the publications at certain mailings, and the total number of copies in those mailings. It specifically states in the record of that hearing that it does not go to or apply to the question of the right of the publications to continue in the second class. Under the directions of the Postmaster General April 14, 1906, that question was to be determined, but it could be taken up and determined only after the question of excess mailings had been settled. A copy of the stenographic report of the hearing of April 30 and May 1 had been sent to the Postmaster General on July 3 following. He must be assumed to have known its contents, for he did not call for another copy before taking his action.

A compared copy of the stenographic record of the hearing on April 30 and May 1, together with a compared copy of the letter of transmittal of a copy thereof to the Postmaster General, July 3, is submitted herewith in one, marked Exhibit No. 36.

EXHIBIT No. 36.

JULY 3, 1906.

Memorandum for the Postmaster General.

Gen. CORTELYOU:

In accordance with your directions, under date of April 14, 1906, Mr. E. G. Lewis, on behalf of the Lewis Publishing Co., of St. Louis, appealing from the postmaster's ruling as to excess mailings of copies of the Woman's Magazine and the Woman's Farm Journal, was given a hearing at this office April 30 and May 1, last.

At the hearing Mr. Lewis and others appearing on behalf of the publisher interjected into the record several matters irrelevant to the case before the Third Assistant Postmaster General, but all relating to postal administration. Some of the matters are of much importance, and should, I believe, have your consideration in order that Mr. Lewis may not hereafter be able to say that serious complaints placed before the department at a formal hearing have received no attention.

I had hoped to be able to pick out and mark these items for your special notice, so as to save you the labor of reviewing the entire record of the hearing. Stress of business has prevented my doing so in a complete way. I have been able to get time to review the hearing only in a casual way and to mark occasional paragraphs and statements. A complete copy of the hearing marked as indicated is handed you herewith for such action as you deem proper.

Very respectfully,

EDWIN C. MADDEN,
Third Assistant Postmaster General.

C. D. 26575.
C. D. 58208.

POST OFFICE DEPARTMENT,
OFFICE OF THE THIRD ASSISTANT POSTMASTER GENERAL,
Washington, D. C., April 30, 1906—from 2.30 to 5 p. m.

HEARING IN THE CASES OF THE WOMAN'S MAGAZINE AND THE WOMAN'S FARM JOURNAL, OF ST. LOUIS, MO.

Gen. MADDEN. Gentlemen, this is a hearing upon the appeal of Mr. E. G. Lewis, president of the Lewis Publishing Co., from the ruling of the postmaster at St. Louis upon copies alleged to be in excess of his privilege at the pound-rate postage on the Woman's Farm Journal and the Woman's Magazine. We wish to get into the records the names of the persons who appeared on behalf of Mr. Lewis: Mr. E. G. Lewis, Judge Shepard Barclay, Hon. Lon V. Stephens, Mr. James F. Coyle, Mr. H. L. Kramer, Mr. Walter B. Stevens.

I wish to say, Mr. Lewis, that ordinarily hearings of this kind are open. We admit the press or any person that is interested; but you are privileged to have all you desire who are interested and to exclude any other persons, except those who belong to the department, or are here by direction. It is entirely with yourself to determine that. If you have any objection to any person present, we will exclude him.

Mr. LEWIS. We have no objection at all.

Congressman BARTHOLOMT. Gen. Madden, before the hearing begins I should like to state that the plant of the Lewis Publishing Co., is located in my district, and that accounts for my presence here to-day. The arguments will be submitted by the other gentlemen. All I have to say, and the reason I came here, is that I desire to testify to the character of the gentlemen who appear before you. They are gentlemen of the highest standing in St. Louis, whose word would be believed under any circumstances, in any business transaction, or in any other respect, and they will, I suppose, be able to satisfy you. From the knowledge I have gained from personal study of the subject, if the methods which have been pursued to establish the circulation of the Woman's Magazine, and the other publications, would be pursued to establish the circulation of a daily newspaper, it would pretty nearly break up every first-class newspaper in the country. That is all I have to say.

Judge BARCLAY. The Post Office Department of the United States in the matter of the circulation of The Woman's Magazine and the Woman's Farm Journal. Before the Hon. Edwin C. Madden, Third Assistant Postmaster General: To the honorable the Third Assistant Postmaster General: The Lewis Publishing Co., a corporation engaged now and for several years last past in printing and publishing two periodicals at University Heights, St. Louis County, Mo., namely, the Woman's Magazine and the Woman's Farm Journal, which by due orders and permits of the United States Post Office Department, have been admitted heretofore for transmission at the St. Louis post office, Missouri, at second-class postal rates and privileges under the United States postal laws, respectfully represents, that Mr. Frank Wyman, postmaster at said United States post office at St. Louis, Mo., has demanded prepayment of postage on said periodicals for the May issue, 1906, in excess of the second-class or pound rate, and said demands have been complied with under protest, and the amount thereof paid to said Wyman, namely, on the Woman's Farm Journal of \$3,100, on the Woman's Magazine of \$4,200, total \$7,300; and said company avers that said postage is in excess of the amounts due on the copies of said periodicals according to law and according to the true and correct amount of subscriptions to and for said periodicals, respectively. Wherefore, said Lewis Publishing Co. prays your honor, the Third Assistant Postmaster General, to order the refund to this company of the excess amount of said postage paid by it as aforesaid, because said order was unwarranted, and the copies thereof whereon said excess postage was paid were entitled to be accepted and transmitted from said office at said second-class postal rates according to law.

(Signed) LEWIS PUBLISHING CO.,
E. G. LEWIS, *President*.
H. L. KRAMER, *Vice President*.
LON V. STEVENS,
JAMES F. COYLE, *Directors*.

There is one thing, Gen. Madden, which I wish to ask you about particularly, and that is the second paragraph of your honored communication of the 19th of April, in which you state, in addition to the question of circulation, "In this connection you are also informed that the question of the right of these publications to second-class entry is in dispute." If this matter is to be heard independent of the question of the circulation, we should like to understand it, as it would involve a very much larger inquiry.

Gen. MADDEN. It is independent and unnecessary to-day.

Judge BARCLAY. We can only take the appeal to-day.

Gen. MADDEN. Yes.

Mr. LON V. STEPHENS. Mr. Madden, I take great pleasure, as one of the directors of the Lewis Publishing Co., in presenting to you our honored president, Mr. E. G. Lewis. In this connection I want to say that I have implicit confidence in Mr. Lewis, and you can rely on the accuracy of every statement that he desires and will now make.

Gen. MADDEN. I am glad to know that, Mr. Stephens. Now, Mr. Lewis, the report of the postmaster is that there is an excess mailing of about 300,000 copies of the Woman's Farm Journal, and I take this is prima facie correct, unless you can show to the contrary, which opportunity is now given you. You had better proceed with one publication at a time.

Judge BARCLAY. Are we at liberty to know on what information the postmaster has acted?

Gen. MADDEN. He has acted upon the information furnished him through the investigations from time to time and reported by him.

Judge BARCLAY. Are we to have the privilege of knowing what these investigations were?

Gen. MADDEN. It is immaterial what the postmaster reported; the entire question is one of fact. I want to get Mr. Lewis's statement in regard to the excess alleged to have been mailed.

Mr. GLASSIE. We have the precise figures before us.

Mr. LON V. STEPHENS. You might give them to us, Mr. Glassie, for the purpose of this argument—what Mr. Wyman's claim is as to our circulation.

Mr. GLASSIE. The claim is that the legitimate subscriptions to the Woman's Farm Journal are not to exceed 141,328; the Woman's Magazine not to exceed 539,901.

Gen. MADDEN. Now, Mr. Lewis, I will ask you some questions.

Mr. LEWIS. We wish to state that, regardless of the source of information on which those figures are based, they are absolutely incorrect, as a starter.

Mr. GLASSIE. Our claim is that the mailings in excess of those are outside the second-class privilege. I do not find the exact number of copies mailed in excess, but we know that from our records. That is the issue.

Mr. LEWIS. I understand that the hearing to-day is separate from the last clause of your letter—that is, it is not upon the general character of the publications or their being entitled to second-class privileges; it is purely and simply upon the excess mailings.

Judge BARCLAY. Are we to have the privilege of knowing upon what facts there is a prima facie case? Mr. Wyman's figures or anyone else's regarding the circulation?

Gen. MADDEN. No, sir. I am going to hear what you have to say to establish your own figures.

Judge BARCLAY. Independent of that?

Gen. MADDEN. Independent of that point.

Mr. LEWIS. General, about 20 years ago Congress passed the second-class law. You know as well as I know that the purpose of that law, so expressed at the time and never questioned since, was to encourage and, as you might say, almost to give a bonus to the distribution of good, clean literature, news, and information to the great mass of the American people at the lowest possible price. That was the purpose of the law. It was the purpose of the bonus, as you might say, in the rate. At the time that law was made the men who made it, who were undoubtedly wise in their generation, realized two things. They realized, first, that there were certain features in connection with such law which could not be fixed at that time and could not remain fixed at any time. They would be subject to modification and change from year to year as conditions under which publications were published changed from year to year. Consequently, they gave you, as the executor of that law, a wide latitude in certain things, a latitude that undoubtedly to this day has caused every Third Assistant Postmaster General endless trouble, worry, and anxiety in the performance of his duties. There were other features in connection with that law which they knew could be fixed, and which were fixed and determined, for as long a time as the law would stand. For instance, the question of the subscription price, whether it should be nominal or not, was left open for the judgment of the Third Assistant Postmaster General, who would determine that question in each individual case under the circumstances. What was nominal for the Ladies' Home Journal and the Woman's Farm Journal—that is a case where they left the matter open. Now, there was another thing that was fixed; those lawmakers at that time, and every publisher and every man that has looked into the thing since, knows that the question of sample copies was just as important as the question of subscriptions. It was just as much a part of the legitimate life of the publication, of its existence, and just as important to it as

the question of subscriptions itself, and the evidence shows that they did realize this. They allowed you one sample for every subscriber—they exactly balanced them—one must be equal to the other. Now, that was one of the fixed propositions.

Gen. MADDEN. Do I understand you to say that is a matter of law?

Mr. LEWIS. So I understand it—one sample copy for every bona fide subscriber, unless it has been changed since we left St. Louis.

Judge BARCLAY. If it is not the law, it is at least a portion of the regulations and has the same effect. It is valid as law because it is incorporated in the Postal Laws and Regulations.

Mr. LEWIS. We came here about a year ago before you, General, on the challenge of our second-class privilege. The day previous we had just gone through another hearing on the People's United States Bank. I shall simply mention that very briefly to show a certain connection with this proposition, which can not be passed over. You are probably more or less familiar with the circumstances in connection with the organization of that bank. There is no new idea, and I may go so far as to say no great idea, that has ever gone unchallenged since the world began, and it is a part of the creation of any new idea or new plan that the man who gets out in the front rank to do it must expect to get it in the neck. It is one of those immutable laws—it is almost like gravitation—it has never failed. That bank—there was a great difference of opinion among able, conservative men in the banking business—thousands of bankers agreed with me—thousands wanted me locked up as a lunatic. You remember the destruction of the bank by the issuance of a fraud order. You remember the jumping of the receiver into it, all upon the basis of protecting the innocent dupes. You remember the final decision of the supreme court of the State of Missouri that that bank was sound and solvent and the appointment of a receiver for it was unlawful, illegal, and unwarranted. In the meantime the fame of that bank had been spread from Maine to California, and a franchise worth millions of dollars to the people with money in it was annihilated. We have the receipt for it, where is the bank? At the same time those men which made the charges which resulted in the destruction of that bank, men of ordinary intelligence—I have been accused of speaking of some of them disrespectfully as \$80 jackasses, we will pass that up—but these same men made a charge against my publications at the time that they tried to destroy the bank, and they destroyed the bank, and although they made no investigation at the time they made a charge that those publications were not entitled to the second-class privilege and attempted to annihilate them at the same time that the bank was annihilated. I came here and defended those publications at that time. We went back to St. Louis. The cyclone was kept up week after week and month after month. From Maine to California was spread the charge that our publications were going to be debarred from the second-class mail, that the recommendation had gone in here that they were not entitled to it and should be thrown out. Our whole business was thrown into a turmoil, such as no business has ever been thrown into and existed an hour. Our mail came in by wagon loads, eighteen to twenty thousand letters a day, by express. These subscription letters were sent to me because I am the editor of that paper. Thousands and tens of thousands of letters were stamped "Fraudulent" and sent back to the subscribers. Our business was thrown into a condition of chaos that is almost indescribable. You can not grasp it. Only one who has been in that position can grasp it. We did the best we could. Along about the first part of October the same three inspectors who had destroyed the bank—the same three inspectors who in making their charge against the magazine, charged that they had made a fraudulent statement of thousands of dollars—that charge has been published from Maine to California—and then had to confess that they had made a mistake of adding three little rows of figures, and the fraudulent statement consisted of their own mistake. The same men who had thrown out the bank, destroying a franchise which was worth to it two millions of dollars, declared that I was defrauding the public, and that I was making fraudulent statements, because they were about to take away that franchise, and consequently it was worthless. The \$10 bill in my pocket was no longer money, because they were about to tear it up. About the first part of October these same men came into my office and presented a demand that they investigate my circulation. I replied, "Gentlemen, you are welcome to make an investigation of this institution from the cherubs on the dome to the cellar, but I want fair, unprejudiced, intelligent men to make it, and not you." They sneered at me. Now I said, "Gentlemen, I submit under protest to your making this investigation, but I want one thing and demand it in writing, that you make that investigation from the original subscriptions and the original documents on which we base our own knowledge of our publishing business, because you can not get it any other way accurately and fairly," and they refused to do it. I said, "Gentlemen, take your own methods. I have finished." They brought about 40 or 50 clerks from the Post Office Department, and for five days they counted the little subscription cards of my

publications, and as they counted 10 men stood over them and watched them; and they threw out of the count—because I have the affidavits of those 10 men here under oath—they threw out of the count as bona fide subscriptions the paid-in-advance subscriptions that expired with that issue. For instance, in counting the October and November issues they threw these very cards out and at the same time one of these inspectors, who had a few years previously been a publisher of a weekly newspaper, stated that he had carried his subscribers 18 years and then collected the money. They threw out the cards for the subscriptions which expired in the current month. Now I said, "Gentlemen, you have gone about this thing in a way that will not develop the truth, that will not develop the facts. You can not learn what you want to know about this publication in any such manner as you have conducted this investigation." They said they knew their business. I said, "Well, go ahead, gentlemen, you know your own business." Then they started another thing. They sent out over the signature of Mr. Wynan long blanks to the postmasters, mail carriers, etc., throughout the United States. "We send you so many copies of the Woman's Magazine and the Woman's Farm Journal to be delivered to the people in your town. Inquire from these people and get their statements in writing whether they subscribed to the publications, if so for how long and what time the subscription has yet to run, whether they received sample copies and whether any commission was allowed," and a whole lot of data that not one woman in a million would be able to answer in two years. What was the effect of this? In the meantime, along in the latter part of November, instead of crediting us, as we supposed, on the basis that we were intelligent men, certainly honorable men until we were convicted of crime; we had supposed and believed that if there was any difference, any honest difference of opinion between the results of those inspectors and our statements, that we would be given a hearing and granted the old American privilege of knowing what the charge was and being permitted to answer. On the contrary, they went before the grand jury in St. Louis—they presented to that grand jury, these three inspectors, they never asked a man or officer of our institution to do anything—they went before the grand jury and said, "Here are hundreds of thousands of people which these men claim as subscribers, and the people themselves say they never subscribed." I have got the answer to it. I wanted to give it to them then, but they refused to listen. I was indicted, three of us, for defrauding the Government out of postage.

Mr. Madden, we have built up in St. Louis in the past five or six years what I say to you without any blush is one of the greatest enterprises in America to-day. It is coming nearer to fulfilling the purpose and letter of that second-class law than any publication in America. We have not gone down in some little cellar with our printing presses and got out an advertising sheet to see how much money we could make out of it. We pay to-day \$100,000 a year more on the white paper on which we print our paper than our competitors do for the same number of copies. Why should we give up \$100,000 if it were not to make it a little better, a higher class publication? There can be no other explanation to it. We have the affidavits here of the paper houses to show that if we used the same quality of paper as our competitors do it would be a saving of \$100,000 a year. We built a plant that cost us nearly \$1,000,000, designed expressly and solely for the publication of those papers, and it can not be used for anything else. We did it instead of printing them upon a cheap web press, where we could rip them out by the hundreds of thousands. We put in there slow, high-grade presses that would print them in a high-class manner and make them readable and presentable, and illustrate them handsomely; and the little magazine we give for 10 cents a year, and it is the cleanest, nicest, sweetest little paper in America to-day.

Gen. MADDEN. Do you submit those copies?

Mr. LEWIS. Yes. They are the same the readers get. They all get that same proposition for their 10 cents a year. Now that publication at 10 cents a year is to-day the greatest bargain in the publishing world. It is a sign of progress—nothing else in the world. But the result of that is that thousands and thousands of people pay for that paper for friends and relatives. That is plainly a thing that is beyond our control; there is no way on earth we can stop it. A woman takes that paper for 10 cents a year and she sends in 50 cents and the names of five other subscribers. There is no way on earth that we can get an affidavit from each one that they earn their own dime. But if these thousands of people were asked whether they themselves subscribed for that paper they would say "No;" they don't know why they get it. I have got the evidence here to show it. I did not bring a wagonload, but I can bring you a carload if necessary to convince you. Another thing: It went all over America that this publication they had tried to throw out of the mails last July, but for some reason they did not land it. Then the Federal grand jury indicted us for defrauding the Government out of thousands of dollars. In the meantime the readers and subscribers all over the country wrote in to say "Your inspector came into my

wife's sick bedroom and said, 'Do you subscribe for the Woman's Magazine?'" She said, "No; what is the matter with them?" Then she wrote us about it.

Judge BARCLAY. That is true.

Mr. LEWIS. Don't you think that is ridiculous? Thousands and thousands wrote us that they had been called to the post office, 10 or 15 miles, and had been asked if they subscribed for that paper; and the postmaster told them that we were a fraud, a swindle, that the Post Office Department was trying to put us out of business. Other postmasters took the papers outside of the post office and burned them every month. Hundreds of them wrote in here that their mail carriers warned them to the same effect and refused to give them the paper. General, you can't conceive of that sort of thing. Let me give you a little illustration. We commenced to get them all over America in a single mail more of these blue cards than we had ever gotten in five years—"Refused," "Unclaimed," "Address unknown." I presume a report went in to the inspector at the same time as to these papers that were sent to fictitious parties. We took a thousand of those for your especial benefit in this inquiry, and we addressed those people a letter and put it in a plain sealed envelope, with no mark on the outside, to the same address that we have on the subscription card. We inclosed the postmaster's card and here are the kinds of answers that came back. "In answer to your notice of the 19th, I have not left the city nor changed my address. I took the matter up with the post-office authorities and gave them ———, and I think the next issue of the Woman's Magazine will reach me."

Mr. GLASSIE. What post office is that?

Mr. LEWIS. We can give them to you by the hundred. That was the class of evidence and that was the method employed to get that evidence upon which we were to be tried, condemned, and executed. That publishing company to-day is serving 2,000,000 people, carrying out the spirit of the second-class law as no other publishing company has ever done. It has suffered a loss of over \$500,000 through those methods in the last six months, and I have the evidence of it here with me to-day. We have an investment there of nearly \$3,000,000. When we came here a year ago it was a closed corporation; there were just a few of us in it.

Gen. MADDEN. Do you submit that?

Mr. LEWIS. Yes; I will submit them all. I am going to read a number of them. We have an investment there of nearly \$3,000,000. The men associated with that enterprise are the most intelligent, the most responsible, the most competent business men in the city of St. Louis. We thought that in view of those facts we would at least be permitted, when a difference of this sort came up, to have a fair hearing, don't you know? That we should not be treated as condemned and convicted criminals simply because three post-office inspectors made a charge against us, which charge we have never seen. The difference in our advertising alone, as I said to you when that indictment was pulled off on us last November, over \$500,000 of the business of the company went to smash. Was there any need for it? None in the world. The evidence you required, the evidence that would give you the truth in these matters, was the easiest thing in the world to get, if you wanted to get it, and we were only too ready and willing to help you to get it. In the meantime I want to go back a little. When the fraud order against the bank was issued tens of thousands of people were interested in that bank; they understood that matter better than the Postmaster General understood it. They turned around and turned over \$1,000,000 of the assets of that bank into the Lewis Publishing Co., and said, "You go it again; we will stay with you for another \$5,000,000 if you need it." Just so long as that spirit remains in America we have some show; the minute it dies we are goners; it is the old American spirit that chased the English off the continent. I knew the American people would come in and separate us from this, and I think this is the day we are going to get the deal. Now we were up against a crisis. Our business was being annihilated in advance of any possibility of a hearing or defense; in other words, it was undoubtedly the deliberate purpose of those men that we never would reach a hearing. We would have gotten a monument with a nice inscription, but we are not ready to die just yet. We got together—what was to be done? The directors, myself, Gov. Stephens, Mr. Coyle, Mr. Theo. F. Meyer, and Mr. Carter—men of large personal means, responsible, and of unquestioned integrity and standing, got together and they called upon the public-spirited citizens of the city of St. Louis to come out there and determine the truth of this matter, and we would stand on the result of it, and we want nothing else. We turned over to that committee at the start the whole establishment; we said, "We don't care how you go about it, what it costs, if you will find out the truth and when you get it you give it to the world and we will stand on what you find." I am going to ask in a moment or two Mr. Lon V. Stephens, whose services were engaged as the head of that business men's committee, composed of 10 of the ablest, most competent, most responsible business men in the city of St. Louis, one of them the publisher of a

great metropolitan newspaper himself—you know the others—and Mr. Stephens will tell you how that was handled in just a moment.

I am going to read a few illustrations. [Reads number of letters.]

In this connection, they have accused us of sending our paper to thousands of names furnished by our advertisers. I want to state to you, Gen. Madden, that that is absolutely and unqualifiedly false. What they got that from is this. We are allowed to send a sample copy for every subscriber; that is permitted three times a year. That means that if we are sending out copies to one-half a million subscribers, we must have nearly 2,000,000 sample-copy names. How do we get them? The same way as other people get them, only we are more careful. We buy the letters, in ninety-nine cases out of a hundred, from concerns who do not advertise in our papers. If we used the lists of firms who did advertise in our papers we would simply get our own subscribers again—the advertisements would be in our papers. We go to houses like the Richardson Silk Co. and buy their letters from their customers. We treat them right; they won't sell them to other people. We compare them with our subscription lists at great cost and use them as samples. It might happen that some person who subscribed might get a sample copy in the same month. She might get overlooked. Well, that is some more evidence for you. That is how that accusation originated. Instead of coming out and asking us anything about it, we were charged with sending out thousands of copies to the customers of Sears & Roebuck. On the face of it that is ridiculous. What do we send samples for? We do it to get them to subscribe and send us 10 cents. I think that brings us up to the point where the investigation was made by the business men's committee.

(Mr. Lewis introduced Mr. Walter B. Stevens.)

Mr. W. B. STEVENS. This is the report made by the citizens' committee of St. Louis. I have written out briefly a statement regarding that report, and will read it:

Upon the request of a committee of 10 representative business and professional men of St. Louis, I undertook to devise a plan of investigation of the subscriptions to the two publications issued by the Lewis Publishing Co.—the Woman's Magazine and the Woman's Farm Journal. After an examination of the business methods of the company it seemed to me that any investigation to be thorough and satisfactory necessitated an examination of the original subscription letters and lists. It is the custom of the publishing company to bundle the correspondence relating to subscriptions and to place the same by days and months in a store-room. I reported to the committee a plan for assorting and counting the subscription letters and lists and was asked to undertake the work, obtaining such assistants as were needed. Mr. M. J. Lowenstein, who had been with me on the Globe-Democrat years before and who is business manager of the St. Louis Star, was known as a practical, careful man, was associated with me. We selected six men in whom we had confidence, and employed an expert accountant, Mr. Ambrose, who had been chief accountant in the office of the auditor of the Louisiana Purchase Exposition Co.

These six gentlemen we selected as our supervisors of this examination and count were: D. W. Voyles, attorney at law in St. Louis and a member of the Missouri legislature; Nathaniel McDonald, late deputy clerk of the United States Circuit Court and a relative of the late Judge Thayer; Dr. H. Wells, a widely-known advertising expert, connected with H. E. Lesan Advertising Co.; J. C. Thompson, jr., private secretary to David R. Francis, president of the Louisiana Purchase Exposition Co.; W. L. Posey, a newspaper accountant of many years experience and high standing; and Robert H. Sexton, manager of the Bureau of Publicity of the Louisiana Purchase Exposition.

With these gentlemen, Mr. Lowenstein and I took from the building of the Lewis Publishing Co. the bundle of letters and club lists for both publications for the years 1904 and 1905 and did not return them until we had entirely completed the canvass of them. In the labor of assorting and counting these subscriptions, under the immediate direction of the supervisors appointed by us and whom I have named, a force of clerks ranging from 20 to 35 was employed for several weeks. To be exact, this investigation began January 1, 1906, and was completed February 12, 1906. The count was made as of the date December 31, 1905. This showed the actual new and renewed subscriptions received for the Woman's Magazine during 1905 for terms of one year or more to be 597,465.

Mr. GLASSIE. What did you say it represents?

Mr. STEVENS. As a matter of fact, this represents the actual new and renewed subscriptions received during 1905 for one year or more.

Mr. GLASSIE. What kind of subscriptions?

Mr. STEVENS. New subscriptions that would be alive on January 31. We had to establish some date to work on.

Mr. GLASSIE. Yes.

Mr. STEVENS. We found in the original subscriptions for 1904 that there were 13,243 for more than one year, and of course, these were still alive, paid-in-advance subscriptions on December 31, 1905. It is characteristic of thousands of these subscribers, the amount being small, to send in for from two to five years at a time, 50 cents carrying for five years. We went through 1905 and found this number, 13,243 paid for more than one year, most of them for five. I might say right here that our tables show which kind of subscription.

Mr. GLASSIE. I suppose you have it scheduled. That would make it more intelligible.

Mr. STEVENS. Yes. When we had counted these paid-in-advance subscriptions, we went to the mailing cards of the publishing company to ascertain how many of the subscriptions of 1904 had expired and were being carried for renewal. We found these subscriptions of 1904, which were being carried beyond the date of expiration to number 572,220. The table will show how many expired in each month and were still being carried on the list.

Gen. MADDEN. You had, on December 31, 1905, 500,000—

Mr. STEVENS. Five hundred seventy-two thousand—

Gen. MADDEN. Of the expired subscriptions?

Mr. STEVENS. Of the expired. We found these subscriptions which were being carried to number 572,220; some of them would expire in two months, some in four, some in six, and some in twelve.

Gen. MADDEN. None longer than twelve months?

Mr. STEVENS. We did not go back beyond that. The statement made to us was—

Gen. MADDEN. And approximately 50 per cent of the circulation was on expired subscriptions. Fifty per cent as compared with 597,000 plus 13,243—that was a little more than 600,000, compared with 572,220.

Mr. GLASSIE. Give me those figures again, in order to follow your statement. You found that during the year 1905 there were—

Mr. STEVENS. 597,465 subscriptions, either new or renewed during those 12 months.

Mr. GLASSIE. They were good at that time?

Mr. STEVENS. Yes. And in 1904, those of more than one year, 13,243.

Mr. GLASSIE. Yes.

Mr. STEVENS. Carried on the mailing list of subscriptions received during 1904 and expiring at some time during 1905, there were—

Mr. GLASSIE. Those expired received during 1904? That is shown by the data?

Mr. STEVENS. Yes. There may have been 300 subscriptions that expired in 1905.

Mr. GLASSIE. Yes. Of course they were three-year subscriptions; they might have been back in 1902. The same date of expiration in 1905?

Mr. STEVENS. When we counted the expired subscriptions we counted from the expiration date—572,220.

Mr. GLASSIE. Of those 572,220, they were all subscriptions for which an order had been given some time in 1904?

Mr. STEVENS. The order had been given at such a time that the expiration came in 1905.

Mr. GLASSIE. Yes.

Mr. STEVENS. The date of expiration was in 1905.

Mr. GLASSIE. Then you have a schedule showing how they expired month by month. Thank you, I don't want to interrupt you.

Mr. STEVENS. Of this that I have given as expired, of these 318,471 expired between July 1, 1905, and January 1, 1906.

Mr. GLASSIE. Will you give me that again?

Mr. STEVENS. 318,471. How long a publisher should be allowed to carry expired subscriptions in hope of renewal and call them bona fide subscriptions is a matter on which opinions in the absence of any definite rule may vary. There are publishers who consider a year of grace to delinquent subscribers as not too long. We thought that the Lewis Publishing Co. was justified in calling subscribers who were not over six months behind still bona fide. We took into consideration the fact that this was a monthly publication and that it circulated very largely among people who are not accustomed to pay their subscriptions to periodicals promptly. We examined a great many letters and found that many subscribers did not renew until they received notice from the publishing company. I think it would be very important if the Third Assistant Postmaster General would take the time to glance over those letters.

Mr. GLASSIE. Do you have any system by which the subscribers are notified that their subscriptions have expired? Is he notified in advance?

Mr. STEVENS. No, sir; the notices are sent out quarterly. We found, Mr. Lowenstein and myself, when we started in that the methods were very simple; some

newspaper men would say they were crude. I said something to Mr. Lewis about it. Mr. Lewis said that he could not have very elaborate methods on such a small subscription price or rate.

Mr. GLASSIE. So that you would rather read—I would not interrupt you, Mr. Stevens—

Mr. STEVENS. I shall be very glad—

Mr. GLASSIE. Subscriptions, you say, taken on the 1st of January, 1905, run for a year. Now, when would the subscribers receive their first notice?

Mr. STEVENS. He would not receive his first notice until the quarter of 1906 had expired.

Mr. GLASSIE. He would receive it, say, in April, if your quarters correspond.

Mr. STEVENS. Sure. Now, if it expired in February or March we might let it go over four months. It is a very interesting and a very remarkable way they have of going over these cards and of leaving them out. They say they can't afford to do it oftener than every three months.

Mr. GLASSIE. I understand.

Mr. STEVENS. If the Lewis Publishing Co. is justified in carrying delinquent subscribers six months, then the bona fide subscribers to the Woman's Magazine, as of date December 31, 1905, were 928,179.

Mr. GLASSIE. You get that by adding 597,465, 13,243, and 318,421. Those are the only elements that go in.

Mr. STEVENS. If the Lewis Publishing Co. is justified in carrying delinquent subscribers six months, then the bona fide subscribers to the Woman's Magazine are 929,179. If the company is allowed to carry for one those who have not paid in advance, then the bona fide subscribers number 1,182,928. In a precisely similar manner the count gave the Woman's Farm Journal 235,983 bona fide subscribers. That is set forth in detail.

Mr. GLASSIE. Now, I would like to get those figures again in case we want to refer to them. For the Farm Journal—

Mr. STEVENS. Applying the same principle, 235,983.

Mr. GLASSIE. Have you there in accessible form the elements making up this total?

Mr. LEWIS. We have had copies made for you.

Mr. STEVENS. If a reasonable time for carrying delinquent subscribers to an agricultural paper is twelve months, then the bona fide subscribers to the Woman's Farm Journal on December 31, 1905, numbered 292,847. The examination of the original subscriptions justified some conclusions. During the year 1905—I think this is quite an important statement—the single paid in advance subscriptions to the magazine numbered 335,261. The other subscriptions were in club lists. Those single subscribers either wrote letters or filled out blanks and inclosed money or postage stamps. The correspondence was voluminous. It bore evidence to an active interest in this publication by a large number of women and girls living on farms, in villages and small towns. The reading of a few thousand of these letters will satisfy any fair minded person that the Woman's Magazine and the Woman's Farm Journal have legitimate fields and appreciative readers. These are not publications that appeal particularly to masculine constituencies. They do reach the feminine mind and that is one secret of the success of Mr. Lewis in building up these two publications. It has been amazing that this man has made such a success. He has a way of making the publication appeal to women, especially women living in the country. There are not many publishers who have preeminently this faculty or understanding that enables them to cater to women readers. Mr. Lewis is one of them. The expert accountant who went over the books of the Lewis Publishing Co. found that the receipts from subscriptions to the Woman's Magazine during 1905 amounted to \$18,000. These subscriptions ranged from 10 cents, the rate for single subscriptions, to 5 cents, the lowest club rate; the average for a single year was 8 cents and a small fraction. The first impression of a 10 cent subscription is that it is merely nominal, almost ridiculously small. The fact is the two-thirds of a cent which the publishing company averages on each number from subscriptions goes much farther towards paying for the material and mechanical cost of the product than those not intimately familiar with the publishing business of to-day are aware. When I began work on a St. Louis paper not one of the dailies in that city was sold at less than five cents a copy. The mail rate per annum was from \$10 to \$12. When the first daily was started at 1 cent it was necessary to ship pennies by the barrel from the Treasury Department to St. Louis to make change. To-day every daily paper in St. Louis is retailed six days in the week at 1 cent a copy. The newsdealers and newsboys buy these papers at from one-half to five-eighths of a cent per copy. I do not know what the Lewis Publishing Co. pays for white paper, for composition, and for press work, but from general knowledge on these matters I do not think there is very much difference between the material and mechanical cost per copy of one issue of a St. Louis morning newspaper and one

issue of the Woman's Magazine. That is, a copy of the St. Louis Globe-Democrat or the St. Louis Republic costs for paper, press work, and composition, about the same as one copy of one issue of the magazine.

Mr. GLASSIE. How do they compare as to size?

Mr. STEVENS. Well, generally the composition is very much larger on the daily paper, but that is a very small part. I don't know how the weight would compare. The postmaster could tell you that. I understand the composition is much larger on a daily paper. Here is a point I would like to impress, and that is that in St. Louis we have the cost of publication down lower than anywhere else in the country. The publishing company in one case receives five-eighths of a cent per copy, and in the other case two-thirds of a cent per copy. Those unfamiliar with the local situation may not realize how much the St. Louis daily papers can and do give the readers for a net return of five-eighths of a cent per copy. Those papers print from 50 to 100 per cent more matter than the Washington dailies, and retail at 1 cent on all days but Sundays. The economies that have been introduced in the publishing business have revolutionized it. In no other large printing establishment that I know of have these economies been carried to the point of saving that they have in the plant of the Lewis Publishing Co. Girls do most of the work in the subscription and mailing departments. Lads learning the trade with here and there an experienced man handle the material and the presses. Labor-saving machinery has been introduced in all branches of the business in the Lewis Publishing Co. It is doubtful if anywhere else in the United States there is a printing establishment which does work at such minimum cost. In St. Louis we have come to look upon the publishing plant of the Lewis Co. as a model and to take pride in it as a local institution. We realize that the publication of a monthly magazine at a subscription price of 10 cents a year is not a joke, not a fake. The recognition of the character of these publications was shown in the consent of the members of the committee to investigate its subscriptions. This committee was composed of: L. B. Tebbets, chairman, vice-president Commonwealth Trust Co., and director National Bank of Commerce; George H. Augustine, secretary, vice-president Carleton Drygoods Co.; L. D. Kingsland, president Kingsland Manufacturing Co. and president St. Louis Manufacturers' Association; John B. O'Meara, ex-lieutenant governor of Missouri, president Hill-O'Meara Construction Co.; I. H. Sawyer, director Brown Shoe Co.; William Bagnell, president Bagnell Lumber Co., director Missouri Trust Co.; George W. Jamison, Jamison & Thomas, counselors at law; George T. Coxhead, general secretary Y. M. C. A.; Hon. Nathan Frank, ex-Congressman, St. Louis Star-Chronicle; Jackson Johnson, president Robert, Johnson & Rand Shoe Co.

These gentlemen acted in no perfunctory sense. I want to emphasize this; they were insistent at the beginning that, to quote their own resolution, the investigation should be "thorough, exhaustive, and complete." They passed upon the plan of investigation before the work was begun. The chairman of the committee, Mr. Tebbets, made daily visits to the rooms while the canvass and count were in progress. The members of the committee came to see for themselves that the plan was being carried out faithfully. They impressed upon those in charge that there must be accuracy; that in no detail could the work be slighted, and after reviewing all that had been done and after going over the report carefully, these 10 gentlemen signed it.

The accuracy of this count stands upon more than the elaborate tabulated statement of it. Every package and bundle after the contents had been assorted and counted was restored, labeled, lettered, and numbered. The packages of 1905 thus handled number 699. It is possible to take any one of these 699 packages, recanvass it, and by comparison with the tabulated statement verify or disprove this statement of the count.

What number of subscribers whose term of subscription paid in advance have expired the Lewis Publishing Co. should be permitted to call bona fide is a matter of opinion until the Post Office Department shall have made an explicit ruling. Taking into consideration that this is a monthly publication of large circulation and small subscription rate, that it must practice the strictest economies in its business methods in order to keep down the cost of publication, that it serves largely readers on farms and in rural communities who are not accustomed to pay subscriptions in advance, the committee thought that the grace on delinquent subscriptions should be at least 6 months. We examined sample letters and I gave to them as far as I could the ruling of the department, especially the extract from the letter of Gen. Madden regarding carrying subscriptions that have expired; and after thinking it all over they concluded that they could report that Mr. Lewis was entitled to carry delinquent subscribers 6 months, taking into consideration the character of his publication.

This is somewhat personal, and I don't like to introduce it, but it may have some bearing—it may help to emphasize what I have said. For a period of 17 years I served the St. Louis Globe-Democrat as its Washington correspondent. I have been to some extent familiar with Post Office Department policies and rulings. When Mr. Loud,

of California, was on the Post Office Committee of the House of Representatives, and when efforts were being made to remedy abuses of second-class privileges, I was instructed by the Globe-Democrat to give the subject special attention, and did so. Mr. Loud and officials of this department gave me the use of information which had been gathered, and, so far as I had the ability, I pointed out the legitimate use and abuse of the privilege, creating all of the reform sentiment I could. Such opinions as I then formed were decidedly against the misuse of the second-class privilege. When this investigation was undertaken the committee of citizens of St. Louis was told plainly that no ex parte report could be made. The chairman replied that the committee would be satisfied with nothing but the facts. In a determination to show the Lewis Publishing Co. no favor and to establish the truth this investigation was made.

Mr. BARTHOLOTT. Will you permit me to add just a word? Mr. Stevens was formerly the president of the Gridiron Club, and enjoys the confidence of every public man with whom he came in contact.

Gen. MADDEN. I am glad to know that.

Mr. GLASSIE. In going over this question of expired subscriptions and the period that ought to be permitted, did you examine the correspondence of persons who, after any length of time, had renewed?

Mr. STEVENS. We found a great many letters; I can not estimate that, because those letters number by the thousand. People would write and say, "I have received your notice and inclose 10 cents. My subscription expired two months back."

Mr. GLASSIE. Was that especially set forth for you, or did you find it in examining the original orders?

Mr. STEVENS. We went into the worst mess you ever saw.

Mr. GLASSIE. In examining the original orders you found these with them?

Mr. STEVENS. At the end of every day they bundle up their mail and send it into their storeroom.

Mr. GLASSIE. The daily mail?

Mr. STEVENS. Everything is taken off by their card system.

Mr. GLASSIE. The daily mail in relation to every subscription is stored?

Mr. STEVENS. No; only the subscription mail. The mail is opened by three girls, and they take out the 10-cent pieces, put a blue mark on the letters, throw the money one way and the letter the other. If they are new subscriptions, they go on new cards; the old subscriptions, they have a way of weeding them out.

Mr. GLASSIE. One question. Were these original papers turned over?

Mr. STEVENS. Absolutely.

Mr. GLASSIE. How did you get hold of the statements that persons desired to pay for a subscription that perhaps expired four or five months previously?

Mr. STEVENS. We had to go through every letter in making up our count. It took a great while.

Mr. LEWIS. Now, there is a short explanation in regard to this, if we have time.

Gen. MADDEN. I will keep you here until 5 o'clock.

Judge BARCLAY. This is very important to us.

Gen. MADDEN. You will have every opportunity in the world.

Mr. LEWIS. You see, general, that brings the matter to this point. Let me explain to you our system of carrying subscriptions and renewed subscriptions. We are dealing with 10-cent pieces, and you can eat up a 10-cent piece in a second. We could not go into an elaborate bookkeeping as would a \$5 newspaper. It would be absolutely worthless, for this reason. We have a million women on our subscription list. A large proportion are young women. Say 10 per cent marry this year. Now, if we had them catalogued under their maiden names, then they go and get married, or perhaps move to another town, and we want to refer or find out where we get subscriptions from, we can't do it. Mrs. John Smith might have been Miss Sarah Jones, a hundred miles away when she subscribed. The only thing that we can do is to keep the original letters as we receive them all in a package and send them down stairs; and then we go by our card file which is made from these letters.

Mr. GLASSIE. Do you keep these letters?

Mr. LEWIS. Nothing back of 1904. Back of 1904 we destroy them. One woman sent us \$250 for 2,500 subscriptions for her friends. We have \$10,000 special funds.

Gen. MADDEN. If there was a renewal there was no evidence of it in 1904?

Mr. LEWIS. Absolutely none. Our cash showed that 220,000 club lists were sent back for renewal; we could not show the original letters—the cash showed that we received it, but the committee would not allow them. The fundamental, vital, and fatal error on the part of those inspectors was that instead of considering us reasonable, honorable business men, entitled to consideration, they went at us as if we were convicted criminals. Taking into consideration what we know about our own business, they should have started with those original letters, and the whole thing would have gotten down to what was a reasonable count.

Now, when we come to the question of our competitors' subscribers—they have to send in a death warrant to get off their subscription list. Take such a paper as the *Northwestern Agriculturalist*, they say right in their paper that "A notice to your postmaster will not enable you to stop this paper." Let me give you one: "How to discontinue." We do not give them a line of conversation such as a notice that their paid-in-advance carried-over-for-credit time has expired; we say, "If you don't renew, we will cut you off; if you do renew, we will date your subscription back to the time of expiration." We do it quarterly—we want to do it semiannually. We carry no subscription beyond the current year. If they can't renew by the current year they go off. We take them off—they are dead ones. Take the *Northwestern Agriculturalist*: "We do not desire to keep those who do not appreciate the practical benefit of our paper on our subscription list. We rely on the subscribers to notify us; a refusal to take the paper will not enable you to stop them." You have to take a shotgun and go down there and make them stop it. We thought there was a general law on this whole proposition, but that didn't make any difference. If the subscriber does not renew during the current year, he is cut off. One-twelfth of that total list of nearly 2,000,000 expires every month—nearly 200,000. The detail is so terrific that unless we had a simple system, understood by us, adopted, we simply could not publish that paper. The reader gets the benefit of that system and gets for 10 cents a much better paper than he ever got before for 25. Well, now, we are getting down to semiannually, and twice a year we will send them a blue wrapper, and if they don't renew they will be cut off.

There is one mysterious proposition that has run up against us in our wrappers. We find that that originated with a talented young gentleman who got into our employ with the express purpose of balling up our subscription list. We have the affidavit for that. There was said to be some mysterious legerdemain in connection with our wrappers. What does a 6-inch wrapper mean? What does a 5-inch wrapper mean—some blue, some with the corners cut off—mysterious combination? I was unwilling to give the answer. The truth is the simplest thing on earth. We had to keep some sort of key to this thing. Now, then, a blue or green wrapper means that it is a notice that your time of paid-in-advance subscription has expired, and go and renew. In our great rolls of paper there is sometimes a dent sometimes halfway through. That paper would be worth a couple of cents a pound unless we cut it up into wrappers. Sometimes they are 6 or 8 inches wide, sometimes they are 6½, etc. We use these different sizes for a definite purpose. If there is any particular kind of sample letters that we are going to use this issue, when the wrappers come back through the mail marked "Undeliverable," for any reason, we want to be able to go back and pick out the letter and find the trouble. We use a certain kind of wrapper on the letters from a certain house. Now, that is what these wrappers are for. That is why we use them each month. When the paper comes back through the mail stamped "Undeliverable" we find we used a narrow wrapper on letters from the Richardson Silk Co. letters. Hence we are able to find the original letter and discover the trouble. If they have been doing any monkey business we will catch them. We use them for our own key. We have to have some kind of key in our business.

MR. GLASSIE. What was the suggestion?

MR. LEWIS. It was said that there was some mysterious hocus pocus that would enable us to flimflam the Government. In other words, there was such an atmosphere of fraud thrown around that institution that everything we did was considered a confession of guilt. We were not satisfied, we were not going to take any chances. Mr. Cortelyou made an inquiry and had the American Advertisers' Association make an investigation. The American Advertisers' Association spends tens of millions of dollars in advertising in the great metropolitan newspapers and magazines. They have an organization which ascertains the bona fide circulation of newspapers. They go through and examine them—and they have experts to do it—because on the basis of their examinations and reports millions of dollars of money are spent on advertising contracts. That is the sole basis the advertiser has. We sent for them and had their experts come down; we turned over our whole outfit to them. They allowed us more than the business men's committee did, because where our cash showed subscriptions they allowed them, whether we had the original letters or not. [Reads certificate of the American Advertisers' Association.]

Now I will submit a certificate of the *Woman's Magazine*. This certifies that this association has examined the circulation of *The Woman's Magazine* covering a period from the 1st of January and ending December, 1905, gathering the same from press-room records, etc., and finds that the average number of copies circulated was 155,000.

Now, we had nothing but the original letters for the years 1904 and 1905; prior to that we threw them away; we destroyed all of them. Consequently the committee could not tell anything about the subscriptions for three, four, or five years back, which they never gave us credit for. I should think that if a current year is a reason—

able time that we are entitled to mail 220,000, or 80,000 more copies than we did mail. Now these questions are all questions of fact. They are questions that we want ourselves to be shown—you know we are from Missouri. Where is the law that you go by on these things? What is the reasonable time, General?

Gen. MADDEN. There is no definite rule; it depends upon the portion, the length of time, all the circumstances of the case.

Mr. LEWIS. Now, for instance. We expire them quarterly. There is Lipton's; I think they expire them yearly; at least the Youth's Companion, which we have read since we were boys, expires them yearly. If we expired semiannually one-half would be expired and would not know it, one-half would be expired and yet in no case would they receive any notice; we don't print on the wrapper "Your subscription has expired." It is not practical to do it; there isn't any sense in it. We carry it a little bit further. If they don't renew, we cut them off. But we find they do renew, but they wait for that blue wrapper before doing so. One-half of the list would have to be carried on credit. Take the April issue, if we simply carried it for one month, sending out a million papers, lots of people won't get them until the latter part of May. Some of them are from Timbuctoo, from Trinidad, New Zealand, Honduras—we have subscribers all over the world. Now if we carry them for the single month of May, one-twelfth is out now. Before we reach the month of June another issue goes out. One-sixth of our total list is carried on credit, before you can turn around and think about it. We find six months is practical. We did have it down to three months. We now carry it on six months. Now, General, I will leave with you here a tabulated statement for the years 1904 and 1905, which can be verified—say package 33-B or 33-C—we can give you the packages containing the original letters which these people wrote containing their subscriptions, and that will show the renewals, clubs, etc.—our cashbooks correspond.

Judge BARCLAY. Do you want these left here?

Gen. MADDEN. Whatever you wish to submit. I wish to ask you, Mr. Lewis, a few questions which are very important. You can probably answer them from the papers you read from.

How many copies of the Woman's Farm Journal are printed of each issue?

Mr. LEWIS. We can tell that from the Farm Journal itself. Let me see.

Gen. MADDEN. Whatever you wish to submit is what I want. I want to have you make a statement of what you print.

Mr. LEWIS. Approximately 600,000; sometimes a little under, sometimes a little over.

Judge BARCLAY. In any particular month?

Gen. MADDEN. Right now; how much does it vary? How many of these came to you direct from the subscribers themselves?

Mr. LEWIS. You can get that from those records.

Gen. MADDEN. I want your statement in the regular way.

Mr. LEWIS. We know more about it from those records than from anything else.

Gen. MADDEN. I will read the questions. This is the question in relation to the matter of the excess copies of that issue in dispute. I do not care anything about the January issue; I want to know about the April issue.

Mr. LEWIS. That would be the April issue of the Woman's Farm Journal. The receipt would show that. [Reads receipt.]

Gen. MADDEN. Now I will give you the questions. First, how many copies of the Woman's Farm Journal are printed of each issue, and especially of the issue in dispute? When I say each issue, I do not care to have you go back, as it may be inconvenient to furnish. I especially want to know on this issue. How many copies are printed of the issue in dispute?

The next question is, How many copies of the Woman's Magazine are printed of each issue, and especially of this issue in dispute?

The next question is, How many subscribers have you to the Woman's Farm Journal? That includes all whom you claim for subscribers.

Mr. LEWIS. We claim as many as it gives us. We have \$10,000 in a special fund—

Gen. MADDEN. I want your claim. I don't care anything about the special fund. How many subscribers have you to the Woman's Magazine? That especially relates to the issue upon which this dispute has arisen and as far back as you can conveniently give it.

How many subscribers are there to the Woman's Farm Journal who have paid their own money at the full advertised price, entirely free from any combination offer, premium, or other inducement whatsoever?

Mr. LEWIS. All of them, General.

Gen. MADDEN. Well, I want your statement. Do I understand you to say—

Mr. LEWIS. Pays 10 cents in cash—

Gen. MADDEN. For both publications?

Mr. LEWIS. Yes; the agent gets his commission.

Gen. MADDEN. Yes; let me repeat that question: How many subscribers are there to the Woman's Farm Journal who have paid their own money at the full advertised price, entirely free from any combination offer, premium, or other inducement whatsoever?

Mr. LEWIS. We give no premiums.

Gen. MADDEN. Then I understand you that this publication is not sold to any person—

Mr. LEWIS. For less than 10 cents a year—that is, with our knowledge or consent. Some club agent might knock off a cent.

Gen. MADDEN. Then my next question—

Judge BARCLAY. One point. Do you mean that each person paid for it himself or one person paid for by another?

Gen. MADDEN. No; all—

Judge BARCLAY. There is no reduction to the original subscriber; it is simply by way of commission?

Mr. LEWIS. Yes.

Gen. MADDEN. How many subscribers have you for the Woman's Farm Journal paid for at less than the full advertised price? Explain in detail how they were secured. Same question as to the Woman's Magazine.

How many of the subscribers to the Woman's Farm Journal have expired? And then the same question as to the Woman's Magazine.

What is the greatest length of time that any of the expired subscriptions have been carried as to both publications?

What is your method of mailing; that is to say, do you mail your subscribers' copies separately and your sample copies separately?

Mr. LEWIS. What do you mean by that?

Gen. MADDEN. Mailed at one time, or do you mix them?

Mr. LEWIS. Well, they are mailed on the magazine within about 12 days. We put in about 2 carloads a day.

Gen. MADDEN. I will give you ample time to submit—

Mr. LEWIS. We mail the whole magazine in from 10 to 12 days, and the Journal in about four days. We send down the subscriptions first and then the samples. I would have to get information from Mr. Cabot—

Gen. MADDEN. What I want to get at is whether you mail your subscribers' copies in one load at one time and then begin mailing your sample copies.

Mr. GLASSIE. Is the mailing of your subscribers' copies completed before you mail the sample copies?

Mr. LEWIS. I could not answer that; but I could find out from Mr. Cabot. He can tell you for the last six months. He knows. They might fill up two-thirds of a car with regulars and the rest with samples.

Mr. GLASSIE. They would not be mixed.

Mr. LEWIS. No, they would sack and mark them separately.

Gen. MADDEN. I want to know whether the sample copies are mixed when they are presented at the post office, or mailed separately. That is the question.

Mr. BACON. I think our receipt book would show that. I can have that information for you in the morning.

Gen. MADDEN. It is perfectly possible for the postmaster to know whether you mail subscribers' or sample copies.

Mr. LEWIS. Oh, yes. When we put them up without the word "Sample" we are mailing as bona fide subscribers' copies.

Mr. GLASSIE. Now, each individual wrapper has got to be marked separately. When you take sample copies, is there no way to designate the difference?

Mr. LEWIS. I don't know anything about that.

Mr. GLASSIE. Do you sell subscriptions to any person at less than the 10-cent rate?

Mr. LEWIS. Except to club agents.

Mr. GLASSIE. What is the difference? What do you mean by club agent?

Mr. LEWIS. A man or woman who goes out with club blanks and who is allowed a commission. Now, in every issue of the magazine we have an article, "A dollar easily made." I presume you refer to whether we will send them to any concern. Absolutely none. I happened fortunately when I came down here to take out a letter which we received from the United States Corset Co. They wrote in—you understand we are sending out from five to ten thousand pairs of corsets to our customers—we should like to put in a mail slip in The Woman's Magazine, and every time a 10-cent subscription blank came in we were to credit them with the commission as an ordinary subscription agent, and they were going to use that in advertising with us. We

absolutely refused to touch it. A number of small country banks have asked us if they could buy a thousand or so subscriptions to be sent as gifts to their customers. If that has been done, it has been absolutely without our knowledge or consent.

Mr. GLASSIE. That is what you mean when you say 5-cent clubs?

Mr. LEWIS. Yes, 20 subscribers for \$1.

Mr. GLASSIE. That is why he says 10 subscribers at 10 cents, keep 40 and send us 60.

Mr. LEWIS. That nets us 6 cents. We have nothing below a 5-cent club.

Mr. GLASSIE. What is the difference between the count made by the postmaster and the count made by this committee as to the paid-up, live, unexpired subscriptions?

Mr. LEWIS. Mr. Wyman allows us in his letter here 534,501 in May. According to the business men's committee—

Gen. MADDEN. Well, let me ask you a question. You say you received a corset offer. Did you ever accept one of that kind from any other institution?

Mr. LEWIS. No. Not within the last four years.

Gen. MADDEN. Ever have any dealings with a face-powder concern where the subscriptions were sent by the face-powder institution?

Mr. LEWIS. No, sir; not that I know of. One where a club agent down in Texas had printed a handsome illustration of the December cover and was sending it out with another magazine. We did not authorize that. He got some subscriptions for The Woman's Magazine by offering it in conjunction with some other publication. He sent us a sample. We do not encourage or countenance that.

Mr. GLASSIE. As to the paid-up, paid-in-advance, unexpired subscriptions, there is a difference of 60,000.

Mr. LEWIS. A difference between the postmaster's and ours?

Mr. GLASSIE. Of 60,000.

Mr. LEWIS. They show that during the year 1905, this past year, we received 597,465 on The Woman's Magazine; and the postmaster—

Mr. GLASSIE. It would be in the neighborhood of 72,000 copies.

Mr. LEWIS. Between the postmaster's count—that is, of the unexpired, paid-in-advance subscriptions, about 100,000.

Mr. GLASSIE. I don't want any question about expired subscriptions. I want to get at the subscriptions admittedly current.

Gen. MADDEN. It is a question as to whether you have had any dealings with any member of a face-powder concern who has sent you subscriptions.

Mr. LEWIS. Not that I know of. I can find out whether we have bought letters from face powder concerns. We carry Ren Levy and Benzoin advertisements as straight advertising.

Gen. MADDEN. I want to know whether any dealer in face powder or any manufacturer of face powder has been sending in subscriptions to the publisher.

Mr. LEWIS. We could not tell that, you know.

Gen. MADDEN. I mean in bulk.

Mr. LEWIS. There is no question about that. No, absolutely. He might send in subscriptions, but I would not know about that.

Gen. MADDEN. Is there any instance of where either of your publications have been given away as a premium for subscribing to other publications?

Mr. LEWIS. Not that I know of.

Gen. MADDEN. None that you know of?

Mr. LEWIS. We would not permit—

Gen. MADDEN. Would you know it if it were done?

Mr. GLASSIE. Could you help knowing?

Mr. LEWIS. A concern down in Texas sent us a copy of this December issue which they had had reproduced and stated that they had sent out thousands of circulars, don't you know, clubbing the Woman's Magazine with other papers at one price for the whole of the papers. That was the first we heard of it, when he sent them in. We received them the same as we do other club subscriptions. There is another case of a man and his wife who go, say, into a factory town and clean the whole place out, taking most of the subscriptions for five years. That man has made a good living traveling over the United States, taking subscriptions for our 10-cent magazine.

Gen. MADDEN. Have you ever got a considerable number of subscriptions from any institution? If they sent you money for some other persons, you would take note of it.

Mr. LEWIS. We would stop it.

Mr. GLASSIE. Have you any record that will show the largest number of subscriptions paid for by a single person?

Mr. LEWIS. As gifts, or something of that sort?

Mr. GLASSIE. No, a single person for others. What is the greatest number that you have? Have you any way of discovering?

Mr. LEWIS. No, we can not tell, except as you can ascertain from these letters. For instance, a woman sends in four or five dollars to pay for that amount of subscriptions. Mrs. Stillwell sent in \$250.

Mr. GLASSIE. Do you know of a case of any advertiser in your paper who has sent in subscriptions for others to a number exceeding, say, \$100, so as to give them away?

Mr. LEWIS. No, I don't know, Mr. Glassie. I can find—

Gen. MADDEN. Have you ever had any dealings with a medicine company that has been sending you subscriptions?

Mr. LEWIS. Cascarets?

Gen. MADDEN. Well, any medicine company that has been sending you subscriptions.

Mr. LEWIS. I want to state right here that if there is any concern, medical or any other concern, in America that makes the statement that they are supplying us with subscriptions and paying for them themselves with our knowledge and consent, they are deliberate liars, and unqualifiedly so. I think I know what I am talking about. I will find out from Mr. Cabot whether there is anything of that sort.

Gen. MADDEN. Ever so in the past?

Mr. LEWIS. There never was that I know of.

Gen. MADDEN. It has not been done recently?

Mr. LEWIS. Not within three years.

Gen. MADDEN. You are positive about that?

Mr. LEWIS. Yes. If it has, it has been without my knowledge and consent.

Gen. MADDEN. Now, I want to ask you one question that is important.

Mr. LEWIS. The nearest to that—you remember that endless chain of the Sterling Remedy Co., when they sent out hundreds of thousands of cards containing a 10-cent contract for the Woman's Magazine—

Gen. MADDEN. How long ago was that?

Mr. LEWIS. Three years ago.

Mr. GLASSIE. What was the point in sending the cards?

Mr. LEWIS. In order to distribute samples of cascarets. They paid 10 cents straight for the magazine. That must have been four years ago. These have all expired and been wiped out. We got the full 10 cents, anyway.

Gen. MADDEN. This is a question that is important. Have you ever taken from the list of persons to whom you sent samples any names and added them to your list of subscribers without the payment of money by those persons themselves?

Mr. LEWIS. Yes; that is the special fund. When they jumped on us in 1905, it aroused a good deal of sympathy and indignation in the United States. If you will read some of these letters, which I did not want to read aloud because ladies were present, from the husbands of the subscribers, it was not in any measured terms. You will find a great deal of that in here. There was one man in Pennsylvania who was making \$15 a week and who declared that so long as we needed money to keep up the fight he would send us \$10 each week to assist us. We received another check for \$250. About \$10,000 came in in a very short time. We did not know what to do with it. We put it in a special fund and the senders told us to use the amounts to pay for the subscriptions of other people. I furnished a tabulated statement by months, showing exactly how we used that fund. There is remaining of that fund a balance of four or five thousand dollars. Now, we don't know what to do with it.

Gen. MADDEN. I wish you would submit a statement of how much.

Mr. LEWIS. We furnished the statement to the inspectors in tabulated form. We can give you that.

Gen. MADDEN. Now, gentlemen, I am going to adjourn this hearing until 2.30 tomorrow. You can get your matter ready and I will have more questions to ask.

Mr. GLASSIE. Is this so-called defense fund shown in tabulated form?

Mr. LEWIS. No; they would not allow it. They would not allow anything for which we did not have the original letters of the parties themselves paying for the subscriptions. But we have mailed a great number of papers—I want to call this to your attention—independent of this defense fund, we had over 900,000 bona fide subscribers, and no sample copies that we took out of the sample-copy class and mailed as regular did not affect the matter of bringing those up to the required number of bona fide subscriptions. Without these we had more than we required—the given number of copies—1,500,000.

Mr. GLASSIE. You did not use this defense fund to mail other sample copies?

Mr. LEWIS. It was over and above the 50 per cent of sample copies.

Gen. MADDEN. I understand you to say that when you did draw upon this defense fund to make subscribers that you did not then base sample copies upon it?

Mr. LEWIS. It was over and above; you can take that from the records.

Gen. MADDEN. You are positive?

Mr. LEWIS. Absolutely. There is a further point there. We would send those papers, not marked as samples, and there was no chance in the world to get a subscription from those persons. We did not know what to do with the defense fund. We dare not use it.

Judge BARCLAY. You see, when these people got their subscription without paying for it themselves they never subscribed. It is difficult to get subscribers when you do that sort of business.

Gen. MADDEN. As many of you gentlemen as are necessary please be here to-morrow at 2.30.

Hearing continued 3 p. m., May 1, 1906.

Gen. MADDEN. Gentlemen, this is the second day of the hearing of Mr. Lewis on his appeal from the postmaster's ruling as to excess copies mailed of the *Woman's Farm Journal* and the *Woman's Magazine*, of St. Louis. Mr. Lewis is given an opportunity to make further statements in connection with it.

Mr. LEWIS. General, before proceeding to answer your questions directly that you gave me yesterday, I want to make one or two little short remarks as to the character—the general character of what we understand to be the witnesses against us. We have not from the beginning been permitted to know the specific nature of any charge made against us, or who the accuser was; but, of course, we have been able to find out more or less about it in one way or another, and I will begin with the first one. A man named Nichols; that man was thrown out of our establishment—he was first taken out of the street into our establishment—he was thrown out of our establishment because we found he was robbing the mail, and that every morning the large subscription envelopes, club letters, club rates, etc., according to the little girls in his room, would be taken out of the mail and put into the bottom of his drawer, the money extracted therefrom and the subscriptions destroyed. That man, when he found that we had gotten next to it, left suddenly. Since that time we have never set eyes on him. We have heard it directly and indirectly that he vowed vengeance any way he could get it.

The next man we ran across—you can't have a great big crystal lake but that if you stir it up you will get some dead cats and things out of the bottom. The next man that came up was a beautiful specimen of humanity who has since tried to sell out to the post-office inspectors. His name was Parshall. He was a former railroad clerk. He had gotten into our employ, according to his own statement, according to the statements of men who have testified under oath, for the purpose of putting up a job in our mailing and sample lists, for which he was to be paid. When the grand jury was held they subpoenaed from our establishment our head truck driver, one of the women in our mailing department, and a couple of the girls who had been in our subscription department. The head truck driver testified under oath that he was given to understand by the inspector that he was under arrest and that he would be sent to prison unless he signed long documents which were drawn up for him, the contents of which he did not know. The other people were taken and sweated for hours by these same inspectors. After the investigation made by the business men's committee the girls employed in that investigation were called in by those inspectors and sweated with a stenographer behind a screen, according to our best information. Now, General, this investigation has gone on for one mortal year. We have never been advised by one person who dares come out into God's sunlight and put his accusation where we can lay our finger on it. Where are they to-day? Where are those inspectors? We are having our hearing here. They have cost this concern and thousands and tens of thousands of stockholders over half a million dollars in the last six months. Are they here to face us? Can we see their evidence? No! We never for one moment refused to give any evidence, any documents, any books, any information that was required; we have thrown our establishment open from the roof to the cellar. It has gone on for one year. We have been under a ceaseless investigation, examination, and every other kind of "ation," not to show whether we are decent and try to do what we believe is the law and try to comply with every rule and regulation of the Post Office Department, but to see if they can not find something on which to hang us.

Gen. MADDEN. Now, before you go any further, it would seem that right in connection with that statement it would be well to inform you that it is entirely immaterial to be confronted with the accuser or the evidence. I am here having you state your case, and I will determine from the facts; and it is wholly immaterial as to what the reports have been.

Mr. LEWIS. I understand.

Gen. MADDEN. It makes no difference whether you have 1 accuser or 1,000, or what the evidence has been; I will get at the facts. I will decide it myself.

Mr. LEWIS. You will decide it on the facts. I have nothing more to say; I will stand on the result. Now to answer your questions.

Gen. MADDEN. Go right on.

Mr. LEWIS. How many copies of the Woman's Farm Journal are printed of each issue, and especially of the issue in dispute? There are from 610,000 to 650,000 copies of the Woman's Farm Journal printed each month. Now, then, our mailing receipts, which are published each month, and which you have from your Government receipts, show the number we mailed. We keep a small number ordinarily in reserve for filling back numbers. We print an extra few thousand to send out to club agents. A large quantity of these are sent by express, because we can send them cheaper by express than by mail.

Second. How many copies of each issue are printed of the Woman's Magazine, and especially of the issue on which the dispute has arisen? There are from 1,625,000 to 1,650,000 of the Woman's Magazine printed of each issue. Now, then, our mailing records will show what we mail.

Gen. MADDEN. Are your figures correct?

Mr. LEWIS. I am getting these from the reports of the experts, who took them by months. In the Woman's Magazine there is another thing that comes into consideration; that is, that for many months past we have had a large sale on the streets in St. Louis.

No. 3. How many subscribers have you to the Woman's Farm Journal? Let me start these questions over, and I will give them as I have them figured out exactly.

Question No. 1. We print of the Woman's Farm Journal enough to fill our regular subscriptions and sample copies as shown in another manner here, and a supply of reserve copies for club agents and for future use. Of the April issue, 1906, in dispute, we printed between 1,610,000 and 1,615,000 copies.

Question No. 2. Of the Woman's Magazine we printed enough to fill our subscriptions and samples as shown in another answer, and for May, 1906, have printed between 1,550,000 and 1,650,000. The magazine has a large sale in St. Louis now on the streets. Approximately, as we have not the books here to give the exact figures, we have put up postage and excess postage for the mailing of 1,500,000 exactly. The examiners' report shows the monthly average printed of the Woman's Magazine to be 1,609,801 for 1905; that was the monthly average for the year printed. The mailing would be a little below that.

Question No. 3. How many subscribers have you to the Woman's Farm Journal? We have bona fide subscriptions to the Woman's Farm Journal as follows: Unexpired, paid in advance on December 30, 1905, 184,337. The new subscriptions received between January 1—new and renewal—and April 20, was in excess of 55,000, a total of 239,337; less the corresponding months of January, February, and March for 1905 of 50,681, leaves a net paid-in-advance unexpired subscription on the Farm Journal of 188,657. The bona fide subscriptions in force on the Woman's Farm Journal are not less than 310,000.

Gen. MADDEN. That includes your unexpired.

Mr. LEWIS. That includes the current expirations.

Gen. MADDEN. Yes; the current expirations.

Mr. LEWIS. That are carried for renewal.

Gen. MADDEN. Yes; I understand.

Mr. LEWIS. No. 4. How many subscribers have you for the Woman's Magazine, and especially of the issue upon which this dispute has arisen? The bona fide subscriptions to the Woman's Magazine on April 20—that is, as near as we can get to it—

Gen. MADDEN. That is close enough.

Mr. LEWIS. The unexpired paid in advance subscriptions to December 30, 1905, was 597,465; the new paid in advance subscriptions from January 1 to April 30, 1906, was 220,000, which makes a total of 820,771; less the subscriptions for the corresponding months of January, February, and March, 1905, deducted, would leave 199,190, a net total paid in advance subscription to the Woman's Magazine of 621,581. The bona fide subscriptions in force on the Woman's Magazine are not less than 900,000.

No. 5. How many subscribers are there to the Woman's Farm Journal who have paid their own money at the full advertised price, entirely free from any combination offer, premium, or other inducement whatsoever? Of course, we do not know that it is their own money, but we take that for granted.

Gen. MADDEN. Well, I mean that somebody sent pay for them.

Mr. LEWIS. In excess of 310,000 paid subscriptions to the Woman's Farm Journal, April, 1906.

Mr. GLASSIE. Under that you include all subscriptions that you received 10 cents for.

Mr. LEWIS. No; we are not considering in this thing the special fund.

Mr. GLASSIE. You include there where one person has subscribed for a limited number of other persons.

Mr. LEWIS. Yes. That can hardly be separated.

Mr. GLASSIE. You have no means, I understood you to say yesterday, you have no means of separating.

Mr. LEWIS. That will come up in an addition by Mr. Stevens, from the committee who made the examination, which goes into detail. He shows that in his careful examination of all the original letters and subscription blanks the largest clubs very rarely exceeded anywhere from 25 to 50 subscriptions, sometimes 100.

No. 6. How many subscribers are there to The Woman's Magazine who have paid their own money at the full advertised price, entirely free from any combination offer, premium, or other inducement whatsoever? In excess of 900,000 subscriptions to The Woman's Magazine of this issue, May, 1906.

No. 7. How many subscribers have you to the Woman's Farm Journal paid for at less than the full advertised price? Explain in detail how they were secured. No subscriber to the Woman's Farm Journal is permitted to pay less than 10 cents a year with the consent and knowledge of the concern, though we allow agents a commission from the hundreds received through them from subscribers. That is published in every issue. Now to go on. Of course, this will apply to both publications, and the second answer will follow on that basis. We are continually importuned by concerns all over America to allow them to send out—to give as premiums or bonuses, don't you know, the paper in large quantities. We persistently refuse that. We don't do it. I will give you a specific case, because that case happened to come before me, because of its rarity—the only one I remember. A banker somewhere in the southwest wrote in and asked if he could present as a Christmas present to each woman depositor a year's subscription to The Woman's Magazine. We wrote him that if he paid for the subscriptions himself we could see no possible objection to that at all, so long as it was done in good faith, don't you know. It was not done in connection with any advertising scheme. I don't remember any other case of that sort where we made a concession in the last three or four years. The Seedsman have every year gone after us to let them inclose blanks like The Farm Journal, of Philadelphia. You have seen these; I presume they have done this for the last 10 years. We won't let them do it. I spoke yesterday of one case of a subscription agent who had gotten up a special page and he offered The Woman's Magazine at 10 cents straight. We will not permit them to club it where there is any cutting in price. I will give you a short explanation.

Gen. MADDEN. Do you submit that?

Mr. LEWIS. Yes. The other publications charge 50 cents or a dollar. Now, you know, Gen. Madden, that they give premiums and concessions—almost all of them do. What they get is the net price. When we put the price of the Woman's Magazine and the Woman's Farm Journal down to 10 cents a year, our premium to the readers was the Woman's Magazine, and that was the purpose of fixing the price; in other words, by putting the price down to 10 cents a year we eliminated that premium club and combination offer. Why, if they cut the price in half there would be no inducement whatever. All that is eliminated by our putting the price down to 10 cents a year. When we get that 10 cents a year, we come nearer getting the price of our paper than any paper in America. We do not have to have any inducement. Our inducement is the Woman's Magazine at 10 cents a year, and that is what has given it the circulation it has.

No. 8. How many subscribers have you to the Woman's Magazine paid for at less than the full advertised price? Explain in detail how they were secured. The same answer applies as to No. 7.

No. 9. How many of the subscribers to the Woman's Farm Journal have expired? It is impossible to say how many have expired in times past. The report of the citizens' committee allowed us credit for six months' subscription after the paid-in-advance time had expired, and on that basis, which is extremely conservative, our subscriptions in force on the Woman's Farm Journal, they allowed a net of 310,000, and on the Woman's Magazine they allowed more than 600,000.

Gen. MADDEN. Let me ask you a question. Am I quite clear that your answer is that you have expired subscriptions for a year?

Mr. LEWIS. No; you have not that right. The only way we can answer is to give you the unexpired; and after deducting it will give you the—

Gen. MADDEN. Expired?

Mr. LEWIS. Yes.

Gen. MADDEN. From the statements previously made, the difference is expired subscriptions?

Mr. LEWIS. The difference is credit subscriptions.

Gen. MADDEN. What is the longest period that any of these credited subscriptions run?

Mr. LEWIS. Now, you allow for mistakes and unintentional errors. In such a case where a man said he received the magazine four years and we have only published

it three years, the man was a liar—at least he exaggerated. We take the subscriptions from the cards, and as the girls write the wrappers if they expire this month it is marked at the top of the card; that card comes out of the regular file and goes into the expiration file quarterly. We have been doing it quarterly, but we are getting it down to semiannually. On the Woman's Magazine we carry them for six months. For the May issue my understanding is that there is nothing on it back of August, 1905; nothing that has expired prior to August, 1905.

Mr. GLASSIE. What is your expiration period? What part of the year are they cleaned up?

Mr. LEWIS. We are trying to do it semiannually.

Mr. GLASSIE. What has been your practice?

Mr. LEWIS. Semiannually.

Mr. GLASSIE. What date?

Mr. LEWIS. January, February, and March, the regular quarters of the year. That would depend a good deal on circumstances. Take the last fall and summer—we have been fighting for our lives, and the detail of the institution has been neglected unquestionably, because part of the time our subscription lists were being hauled over by 40 or 50 men day after day, week after week, and we just simply, until the first of the year, could not get our bearings. We did not expire last fall, we could not do it. About the last of the year Mr. Cabot commenced to expire what should have been notified last fall.

Gen. MADDEN. Do you carry a notice in your paper advising subscribers that their subscriptions have expired, such as "If you find this paragraph marked, it means that your time is out and we will stop sending the magazine if no renewal is received within 30 days. We don't want to lose you, so please renew at once."

Mr. LEWIS. Well, that means renew in 30 days from notice. We print no notice on the wrapper showing the date of expiration. We can't do it, but we do at reasonable intervals notify them that their subscriptions have expired. Now that is the exact opposite to what other magazines do, who say, "You must inform us if you want to discontinue." We have taken the opposite course. Where they say, "Even a notice to the postmaster will not be considered and will not enable you to stop your paper; you must inform us direct or we will consider you as subscribers," we have taken exactly the opposite stand; we say, "We don't want to lose you, but your paid-in-advance subscription has expired; we will give you a reasonable time, but if you don't renew we will stop your paper." And we do it.

Mr. GLASSIE. And that notice is given in the form of a blue wrapper.

Mr. LEWIS. Yes. A dark blue or green wrapper.

Mr. GLASSIE. How does a subscriber know what that means?

Mr. LEWIS. It stands in every issue.

Mr. GLASSIE. Is it stated there in the publication?

Mr. LEWIS. Yes. In addition to that, we mark that place and inclose a renewal blank.

Mr. GLASSIE. Now, let me see if I understand it. At stated intervals, as frequently as four times a year, to use the language of the statute, you send out to persons whose subscriptions have prior to that date expired—

Mr. LEWIS. Yes.

Mr. GLASSIE. A copy in a blue wrapper as a notification that the subscription has expired.

Mr. LEWIS. Sometimes it might run a month beyond the quarter, but we have been trying to do it four times a year and get them off within the current year.

Mr. GLASSIE. When you mail, the addresses are taken from the cards. I understand you to say that each card indicating an expired subscription is taken out of the regular file and put in the expired file.

Mr. LEWIS. You must remember that we write our wrappers a couple of months ahead. Our June wrappers are nearly all written now. If you notify me to-morrow to stop your subscription you would probably get the May and June issues.

Mr. GLASSIE. When the issue for a particular month is being prepared the persons in charge of the preparation of the wrappers remove from the current file the card of every subscriber whose subscription by that date expired?

Mr. LEWIS. Yes. Then we get that into a separate file.

Mr. GLASSIE. Then it will be possible for you at that moment if you choose to do so to discontinue sending that paper because you have the card segregated?

Mr. LEWIS. To handle it in that way we could not produce and sell the paper for the price we do.

Mr. GLASSIE. I do not say you should; that is another matter.

Mr. LEWIS. That is another matter.

Mr. GLASSIE. One minute. Just answer my question. You have then a separate file for these quarterly expirations and another file for the next quarterly period.

Now you continue to notify the subscribers with a blue wrapper from that expired file. Do you do it with the same kind of a wrapper?

Mr. LEWIS. The same. We find that there will be more renewals from the second notice than from the first.

Mr. GLASSIE. When they renew they go back to the old file?

Mr. LEWIS. When they renew a new card is made out to take the place of the old one and the new card goes into the live file.

Mr. GLASSIE. If it was not renewed, the card goes out the next quarter and another blue wrapper goes out, and the second notice eliminates it?

Mr. LEWIS. That is the general proposition. You will understand that we are handling there such a vast number that it took some 50 men five days and nights to count the cards, as fast as they could count. We have to handle that every month. A girl who is writing cards by the thousand has directions to take out every October card. She is thinking about spring bonnets, and not about cards, half the time, and she may skip one, and another, and another. If we expire them by the single months that way, we will get a certain percentage this month. By the time we come to the second month she has this drawer pretty clean and gotten it over into the expired file.

Mr. GLASSIE. Those cards are kept in a file according to the year, month, and day, in which they were received.

Mr. LEWIS. No, no.

Mr. GLASSIE. How do you classify your cards?

Mr. LEWIS. They are classified by States, towns, and routes.

Mr. GLASSIE. I understand that your system is that you do not have your cards classified according to cities, States, and then alphabetically. Suppose I wanted to ask you if John Smith was a subscriber, living in such a place?

Mr. LEWIS. We would find it by the date. John Smith might have been in another State when he subscribed.

Mr. GLASSIE. You do not classify your original subscriptions?

Mr. LEWIS. No. They go down into the storeroom. This is where the inspectors did what we considered an unfair thing. Instead of beginning with the original orders, which would have eliminated any possibility of question, they shot at me a couple of thousand of separate names and asked me to find out about them. Well, suppose Miss Sarah Jones, who was married last week, is now Mrs. John Smith, don't you know—

Mr. GLASSIE. According to your statement you could not find her unless you knew the day or month in which her subscription was received?

Mr. LEWIS. The only way we could find out would be to go through all letters.

Mr. GLASSIE. Well, your card shows the date when the subscription expired. Would you not by a necessary inference know the date when it was received?

Mr. LEWIS. Yes.

Mr. GLASSIE. If I ask you to find the original subscription for John Smith, you know you can find John Smith's card. That shows the date his subscription expired; would it show by simple calculation when it was received?

Mr. LEWIS. No. It might have been two or three years ago.

Mr. GLASSIE. You would have to go through the letters page by page if it were a yearly subscription?

Mr. LEWIS. If it was three or five years, we could not find it, because we clean them out every year.

Mr. GLASSIE. You ought to find the original order for any definite subscription.

Mr. LEWIS. Suppose there were 125,000 subscriptions received this month and there were 1,000 names for us to find. That would mean reading 125,000 letters 1,000 times to find those names. It would mean nothing else in the world.

Mr. GLASSIE. Perhaps I don't understand it. It may not be material, but I want to get it for my own satisfaction. Suppose I ask you for John Smith; I want to locate him. He lives in Des Moines, Iowa. You go to Iowa and you look up the town; you would find John Smith. The subscription expires July 1, 1906. That informs you that his subscription must have been received to date from July, 1905, 1904, 1903, or whenever your paper started. Why can not you find the subscription order with reasonable dispatch?

Mr. LEWIS. Well, it would not do. You would have to go over the whole month. The card simply says July or June. You have the whole month, you see.

Mr. GLASSIE. I see. Your subscription card shows the month. Then you have to examine the mail for that month to find that particular letter.

Mr. LEWIS. You would have to do it for every one of those names. I took the inspectors down stairs and showed them the letters. I said, "Gentlemen, there are the ~~expired~~ subscriptions; I will pay the cost of doing it if you will just go ahead and ~~do it~~." They said, "You do it." "Well," I said, "I will do it as quickly

as I can. It will take a force of 30 or 40 people three or four months to find what you want. I will do it if you insist." If we had been given an opportunity, we would have done it.

Mr. GLASSIE. Now, I would like to ask you another question, if you don't mind. When you get your girl going over the mailing lists, or cards, whatever you call it, she goes over them by States, counties, and cities, I suppose?

Mr. LEWIS. Yes.

Mr. GLASSIE. A certain block of cards is given to a particular individual?

Mr. LEWIS. She writes a drawer, say.

Mr. GLASSIE. And that drawer relates to a particular locality. She goes through—we will stick to this Des Moines case—and she sees that John Smith's card expires in June. Now, you say there are your instructions. Suppose she is ready to-day for the June issue. If she sees that his card expires in June, at that moment she is supposed to take it out.

Mr. LEWIS. Yes.

Mr. GLASSIE. And she is supposed to write to him a blue or green wrapper.

Mr. LEWIS. Not then.

Mr. GLASSIE. Not then?

Mr. LEWIS. It goes into the other file then?

Mr. GLASSIE. She writes to-day for the June issue—

Mr. LEWIS. Yes.

Mr. GLASSIE. Of course, he gets the June issue without any notice?

Mr. LEWIS. Yes.

Mr. GLASSIE. In other words, his last paid issue ought to be without any notice. So it is with the one following—he ought to get a blue wrapper provided that is the expiration quarter. If it goes out of your first file it goes into the expiration file; when this girl sees that John Smith's subscription expires in June, she takes that card out, she makes out a wrapper in the ordinary way, and that carries the June issue. Now, if she is past the quarterly period for June, the quarterly expiration period, there would be no blue wrapper sent until October?

Mr. LEWIS. Perhaps for three or four months.

Mr. GLASSIE. Mr. John Smith would not know that his subscription had expired until he received the October issue, unless he was aware of it?

Mr. LEWIS. Yes. Take a little community; six neighbors subscribe at the same time. Now, then, if you just went through once that way, two or three would get papers in blue wrappers and two or three would expire that might not. The next month the girl would catch more of them, because it would be more noticeable. The third month it is reasonably sure that she will clean up her drawer.

Mr. GLASSIE. The difficulty, it seems to me, is that by combining the long interval of expiration with a hurried system of excluding the cards you get a multiplication of chances for carrying over your subscriptions an indefinite period.

Mr. LEWIS. No, we would not carry it over an indefinite period.

Mr. GLASSIE. It would not get out oftener than once a quarter—unless it is discovered. Unless that girl has instructions to eliminate it, it does not get into the expired list at all for two quarters, and if she manages to overlook it it might get over three quarters. I understand you to say you carry it for 6 months, so you have practically 18 months of unexpired subscriptions.

Mr. LEWIS. No, you never have that. You never have over six months. They are trained people and the work is carried on pretty cleverly.

Mr. GLASSIE. I am speaking of the way your system operates.

Mr. LEWIS. On top of that, at the second quarter there is another clean-up on the magazine, and I would take my oath that you would not find on that million subscriptions 25 cards that were over six months old. That is as clean as we can keep it.

Mr. GLASSIE. Waiving any discussion as to your right to carry a credit subscription for any period, putting the contention merely on the question of how far your system is a reasonable system for the transaction of this business, and carrying expired subscriptions as a legitimate result, could you not, every time your monthly list was made out, could you not eliminate from the current list and put into a separate expired list those overdue? Could you segregate your expired subscriptions every time you mailed an issue?

Mr. LEWIS. You would get a great proportion of them. But you are working with 180 young girls in that room. Well, now, I don't care how close you watch them—I don't know whether you have ever handled 180 young girls?

Mr. GLASSIE. My experience is decidedly limited, I assure you.

Mr. LEWIS. The average school-teacher who handles 20 girls has a hard time. At any rate, it is a fright, the hardest job we have in our establishment, is the man that we get into that room. Why, he is liable to nervous prostration before the season is out. *It is simply awful.* They try to do as well as they can, but we are not infallible. *I make*

lots of mistakes; I make some dandies. The best thing you can do is to strike a clean average; that is all you can get out of anybody. You have got to average up the good and bad and take the balance. If you get a perfect girl, she is no good. We have 180 girls there. They have about three chances to strike out these subscriptions in the clean-up in the shape of a blue wrapper before we send that notice.

Mr. GLASSIE. You have 12 chances every year.

Mr. LEWIS. We get them out every month. If she overlooks any this month she is more than likely to get them next.

Mr. GLASSIE. Perhaps I don't understand you. I understood you to say that you only eliminate expired subscriptions at intervals of three months, approximately. You have not a standing order that every time they write a mailing list they pick out the expired subscriptions.

Mr. LEWIS. We know that if this month we depended upon what that girl got of the May issue out of that drawer there would be a lot of them left in there.

Mr. GLASSIE. Your process of elimination, then, is this: Every time you write a wrapper and your girl goes over her cards for the purpose of writing these wrappers, she writes her wrapper and she takes out of that box that expired subscription.

Mr. LEWIS. Yes.

Mr. GLASSIE. And that goes into your other file.

Mr. LEWIS. Yes. Now we offer a bonus of a penny for the detection of expired subscriptions.

Gen. MADDEN. Let me ask a question. You put that over into another file?

Mr. LEWIS. Yes.

Gen. MADDEN. And instead of sending the next issue in a blue or green wrapper, it goes out in the regular way until you round up the entire three months. Then you get the expiration.

Mr. LEWIS. Yes. Now, then, we offer a premium of a penny for an error. One of the greatest difficulties we have had to contend with is this question of keeping our list clear. We took a thousand cards that we had received from postmasters all over the country, "Refused," "Unclaimed," "Moved," "Unknown," etc., and sent to these people, to the same addresses, a sealed letter in a sealed envelope. They answered: "I never refused the paper; I have not moved; I am here yet." Now, then, if we had gone by that postmaster's notice and eliminated them from our files, we would have had somebody complaining to the Post-Office Department that she had not received her subscription.

Mr. GLASSIE. That is another matter altogether.

Mr. LEWIS. One after another they come back with the wrappers torn off. We have no way of knowing who they were sent to.

Mr. GLASSIE. That is another matter and apparently worthy of consideration.

Mr. LEWIS. If we had a list of 25,000, those little problems would be settled with the utmost ease; but when you are handling the greatest list in the world—every tenth family in the world is getting our paper—now, when you get up against a proposition like that a 1 per cent error on a million is 10,000 errors. If 10,000 errors came piling into this office in a month, you would think it was rotten.

Gen. MADDEN. I would like to understand before you get away from your statement with regard to these copies how many notices have you received from postmasters saying that the party has refused it, moved, address unknown, etc. Do you know the number?

Mr. LEWIS. We have received more in the last 30 to 60 days than for the past 3 years altogether.

Mr. GLASSIE. How many did you test?

Mr. LEWIS. One thousand, and the bulk of them came back. Some made a little error in the address, etc.

Gen. MADDEN. You have not answered my question. I asked you how many—

Mr. LEWIS. I do not know.

Gen. MADDEN. Do you know whether it is 1,000 or 10,000 or 15,000?

Mr. LEWIS. We tested a thousand, and the great majority came back.

Gen. MADDEN. You do not get my question. How many such notices have you gotten in the last 60 days?

Mr. LEWIS. I do not know.

Gen. MADDEN. Do you know whether it is one, or two, or three—

Mr. LEWIS. Yes; several.

Gen. MADDEN. Do you know whether it would be 5,000? You say you have tested a thousand.

Mr. LEWIS. I do not know.

Gen. MADDEN. What percentage of that thousand came back and said "Removed," "Refused," etc.?

Mr. LEWIS. Sixty-five to 70 per cent.

Gen. MADDEN. Did you hear from the others?

Mr. LEWIS. Most of them said that there was a mistake in the address. For instance, 20 for 200, etc. I have a nice bundle of them. Let me read one or two. Here is an illustration. This is from Sault Ste. Marie, Mich. "I find that once in a while some of the people do not get their magazines. Some time ago I was behind the post office where they burn scraps of paper, and while back there I found two copies of the Woman's Magazine. One cover was torn off, but the address on the other was Mr. So-and-so, 300 South Street. The address was plainly written, and so there was no reason for not delivering it. Please have them deliver the magazine." That is a specimen of the replies that come back. Here is another one. [Reads another letter]. These letters illustrate the difficulty under which we are working and trying to keep our business clean and from being annihilated.

Gen. MADDEN. You will submit all that in an orderly way, will you?

Judge BARCLAY. We have carbon copies that you can retain.

Gen. MADDEN. I would rather you would take the original and give me the carbon. You will retain the original in case we would want to make a comparison.

Judge BARCLAY. Yes.

Mr. LEWIS. No. 9. How many of the subscribers to the Woman's Farm Journal have expired? General, the answer I have given you to the previous question practically embodies this, showing the amount of paid-in-advance subscriptions; the difference, of course, would be—

Gen. MADDEN. The same as in the other case?

Mr. LEWIS. Yes.

No. 10. How many of the subscribers to the Woman's Farm Journal are current and unexpired? Of course, all that were filed in this same way; there are more than 600,000 unexpired, paid in advance for May, 1906. We are entitled to mail also the credit subscriptions of those who have not paid their renewals. Under the law a subscriber is liable for the price of his subscription, and the total list of bona fide subscriptions therefore is over 707,000. Of The Woman's Magazine expired subscriptions are usually cut off about six months from the time the prepayments expired. On the Woman's Farm Journal it is about a year.

No. 11. On account of the low price of our paper, instead of adopting the general credit plan of publication, where they say, "You must notify us to discontinue your paper," we say, "If you don't renew, we will discontinue."

No. 12. What is your method of mailing? That is to say, whether we mail to regular subscribers separately from sample copies. Sample copies are so mailed as such, and strict directions given to have them separately assorted and presented for mailing.

Gen. MADDEN. What do you mean by "separately assorted"? Do you mix them? For instance, some copies for subscribers and some for samples in the same bundle?

Mr. LEWIS. That might be, General. You take a particular sack going to a small town. We often bundle as low as four. If we have been bundling these subscriptions in a town and then reduce it one copy a bundle, it would make a difference of a thousand bundles, possibly two thousand bundles, which is bundling one less copy. Now, then, in little bits of towns, only one or two, these would get mixed. I am not closely enough familiar with the detail to state positively, but that is my presumption.

Gen. MADDEN. Go ahead, Mr. Lewis.

Mr. LEWIS. No. 13. Do you sell subscriptions to any persons at less than 10 cents? Subscriptions are not offered at less than the full advertised price of 10 cents a year; we allow club agents a percentage of the proceeds of the subscriptions as compensation for their services.

Gen. MADDEN. I understand, then, that you do not sell subscriptions to other publications at less than 10 cents?

Mr. LEWIS. Yes. We sell them to club agents. If you write in and say at what price will you make subscriptions—I am going out to get subscriptions—we will make you the price as low as 5 cents each.

Mr. GLASSIE. Nothing lower?

Gen. MADDEN. I want to understand that a little better.

Mr. LEWIS. We do not deal with firms, or business houses, or advertisers, or anything of that sort, on the subscription plan.

Gen. MADDEN. You said if I wrote in and asked you what terms you could make subscriptions for gross numbers—do you have dealings where persons write in and say I subscribe for 100 copies at 5 cents each, and take chances on same?

Mr. LEWIS. No; that is not the proposition. I gave you an illustration that was brought to my individual attention by a bank president. It was not turned down like those that came in every day, that are absolutely turned down. If you write in

and say "What is the lowest price that I can get subscriptions for," 5 cents is the lowest we make.

Gen. MADDEN. You give 5 cents commission—50 per cent off.

Mr. LEWIS. That is on certain size clubs.

Mr. GLASSIE. The agent sends you the difference. If the agent makes a discount—

Mr. LEWIS. That is without our knowledge or consent.

Gen. MADDEN. That is without your knowledge or consent?

Mr. LEWIS. Yes. I will say this, that if it came to my attention as the head of the concern it would be instantly stopped. If anyone was doing it, it would be instantly stopped.

No. 14. Is there any vendor or manufacturer of face powder who has sent you any subscriptions? Well, now, I have wired to St. Louis, and we have cudgelled our brains down here and we do not recall any such unless under an anonymous name. I will file this and tell you later. Nothing of that sort has occurred by or on account of any contract with any company nor have we any data at hand to indicate any such transaction. We have no hint or knowledge at this time of anything to which such question can refer. If you will give us a specific instance—

Gen. MADDEN. I merely asked the question.

Mr. LEWIS. I do not know absolutely of any such condition. If I could get the detail I could give you an explanation that would clear it up instantly.

Gen. MADDEN. That answers the question; that is enough.

Mr. LEWIS. Perhaps I could give you an explanation instantly—

Gen. MADDEN. Your answer is enough.

Mr. LEWIS. Question 15. Is there any instance where either of your publications have been given away as a premium for subscriptions to other publications? No instance authorized by our company. You see our price is so small that there is no inducement to enter into clubbing arrangements with magazines costing \$2 or \$3 per year, and consequently they religiously avoid us. We do nothing of that sort. We do not want it.

Question 16. Have you had any dealings with a medicine company about subscriptions? Some five years ago we had some arrangement between the old Winter Magazine and the Sterling Remedy Co. Nothing of that kind has happened for three or four years, and none of these subscriptions would be in force now unless they had been renewed. My recollection, Gen. Madden, is that those were three months' trial subscriptions obtained from individuals about five years ago. That was the endless chain. We got the money for the subscriptions all right. No contract absolutely exists with any company, patent medicine or anything else, for advertising purposes.

Question 17. Have you ever taken a list of names to whom you have sent sample copies and added those names to your list of subscribers without the payment of money themselves? Yes, and that was given with full detail to the inspectors last November, and I will introduce later a copy of my letter to them, which will give, not only the detail of it, but also a transcript from our cashbook showing exactly the number sent out each month and charged at the regular rates against the fund; but, General, those were sent out over and above the required 50 per cent of bona fide subscriptions. We took just so many sample copies, marked them as sample copies, and sent them out in that way.

Gen. MADDEN. Let me ask a question. You took those subscriptions from your sample-copy mailings?

Mr. LEWIS.

Gen. MADDEN. Did you continue to mail them regularly to those people after that?

Mr. LEWIS. No; only one issue.

Gen. MADDEN. Only one issue?

Mr. LEWIS. It is explained right there. We had a fund that piled up, eight or ten thousand dollars. We did not know how to handle it. We did it just as explained in the letter to the inspectors last November; for instance, we had a \$250 check. The only instructions were to send it to as many people as this money would pay for.

Gen. MADDEN. But not as subscriptions?

Mr. LEWIS. Well, they came in to pay for the subscriptions.

Gen. MADDEN. Did you tell them you sent only one issue?

Mr. GLASSIE. What year was that?

Mr. LEWIS. The schedule shows. That was not counted on our regular 50 per cent. A certain number of sample copies were taken and used in that way.

Gen. MADDEN. If you had the money to pay for subscriptions, why not pay for them?

Mr. LEWIS. The reason is that when this mess came they took exception to it.

Gen. MADDEN. Does that explain the reason?

Mr. LEWIS. Yes. You will find the detail—

Gen. MADDEN. What I want to get at—the question is as to why you did not continue to send to those people.

Mr. LEWIS. That is answered fully there. We have been endeavoring usually—

Gen. MADDEN. Usually. Is that the usual process?

Mr. LEWIS. Well, it was for those three months. Comparatively few have been used each month. We have been endeavoring to use up this fund as rapidly as possible, as in many ways it is a great disadvantage. Copies can not be marked "Sample copy," and consequently bring in no new subscribers. People think some friend subscribed for them. Our advertising arrangements being based on a circulation of 500,000, while we have been issuing 600,000 copies without any increase in our advertising rate, the sole compensation being such as drawn from the special fund. We prefer, where our facilities permit, to entirely eliminate that fund and wipe it out.

Gen. MADDEN. There is some reason why you sent only one issue. You received, you say, \$250—

Mr. LEWIS. There is a reason. If I sent you a copy marked "Sample," you may subscribe. If I keep on sending it to you next month, and then to Mr. Glassie, say, you won't subscribe for it; you will think some friend has paid for it.

Gen. MADDEN. That explains the reason why you did not continue more than one issue.

Mr. LEWIS. That was supposed to be one of the mysterious hocus-pocuses we were working.

Mr. GLASSIE. Did you put these persons to whom you sent copies and charge to the defense fund—did you put them on your cards in your regular list of subscribers?

Mr. LEWIS. No.

Mr. GLASSIE. You simply took names off your sample list.

Mr. LEWIS. And sent to them.

Mr. GLASSIE. When did you stop it?

Mr. LEWIS. The last issue on the magazine was October, and the last issue on the Farm Journal was November. At the time we made this report we had not sent out the November issue.

Mr. GLASSIE. You charged off a half cent.

Mr. LEWIS. Yes.

Mr. LEWIS. And when did you discontinue this?

Mr. LEWIS. We discontinued it in November for the Farm Journal and in October for the magazine.

Mr. GLASSIE. Why did you do it?

Mr. LEWIS. The question came up and we held it in abeyance.

Gen. MADDEN. You mean the right was questioned?

Mr. LEWIS. Yes. We did not want to do anything in which our right was questioned.

Mr. GLASSIE. And these names were taken from your existing sample list?

Mr. LEWIS. Yes.

Mr. GLASSIE. Where do you get your sample lists?

Mr. LEWIS. We buy letters from the best houses in America. For instance, I bought some 300,000 from the Ladies' Home Journal in answer to a certain advertisement from one of the big woolen concerns. I have paid \$12 per thousand, because they were women who had purchased woolen goods through the Ladies' Home Journal; in other words, the cream of the Ladies' Home Journal list.

Gen. MADDEN. I want to ask you two or three other questions now. Please explain your system of mailing subscribers' copies in distinguishing wrappers, and your sample copies in distinguishing wrappers, and why in October in the mailings of the Woman's Magazine your system was changed as to both publications.

Mr. LEWIS. We had last summer a mix-up, as you know, and I think it was about September or October that this man Parshall was thrown out; he was our route mailing clerk. At that time Mr. Cabot was in Europe and the only man I could put in charge of that immense subscription detail, with which I was not familiar, was one of the regular clerical men, who did not know any more about it than a child so far as any previous information was concerned, and he simply did the best he could until Cabot came back.

Gen. MADDEN. Has the practice been resumed of mailing subscribers' copies and sample copies in distinguishing wrappers?

Mr. LEWIS. We use all kinds of wrappers. For instance, a green or blue wrapper is always reserved for renewal wrappers. We get manila, we get white, we buy a great many waste wrappers and cut them up. We get a combination of colors, sizes, and shapes, that there is nothing definite about. We use them as a key very frequently. For instance, if they were going to use the Ladies' Home Journal sample names this month, a certain proportion will come back wrongly addressed. We can not mark on

the wrapper "This sample was used from the Ladies' Home Journal," but on all of these we will use a lot that are of a particular size or shape and make a memorandum, so that if the wrapper comes back we have a check list.

Gen. MADDEN. Yes, but is it not true that it was the practice in accordance with your system that you mailed your subscribers' copies in one kind of a colored wrapper and that you mailed your samples in another kind of wrapper, irrespective of green or blue?

Mr. LEWIS. I can get such a statement from the man in charge.

Gen. MADDEN. If you can not answer now—

Mr. LEWIS. It is my impression that there is nothing in that. It may have been, General, under this man Parshall, but I think there is nothing in that, certainly nothing for purposes of deception.

Gen. MADDEN. I understood you yesterday to say that you took from your sample-copy list the names of persons and placed them upon your subscription list, the subscriptions being paid out of the so-called defense fund.

Mr. LEWIS. I have answered that. When I said put them on our subscription list I meant in that shape.

Gen. MADDEN. That is your answer to it?

Mr. LEWIS. Yes.

Gen. MADDEN. Am I correct in understanding that there are no subscriptions on either of your lists older than one year?

Mr. LEWIS. To the best of my knowledge and belief. There might be some 13 months old on the Journal.

Mr. GLASSIE. Is it possible that they might be as old as two years?

Mr. LEWIS. Not with our knowledge. Such a thing as this will happen occasionally—

Mr. GLASSIE. Suppose there was one; suppose I should show you a copy sent in fulfillment of a subscription where the subscription had been made three years ago for one year. How could it happen?

Mr. LEWIS. It could happen by somebody paying for your subscription again. You might have paid for it for your neighbor or your cousin the second year and said nothing about it.

Mr. GLASSIE. It would not happen unless you had an order?

Mr. LEWIS. No. You must remember 750,000 people passed through our building during the World's Fair, and we had four or five clerks taking the subscriptions of visitors for their friends and relatives. Our camp was one of the great attractions of the fair. Your sister may have been there at the fair, and paid for your subscription for five years. The only way you can arrive at that is to take the original list. We had 80,000 readers camped at Camp Lewis.

Gen. MADDEN. You presented that at the last hearing. One more question—

Mr. LEWIS. That might happen very readily.

Mr. GLASSIE. It could not happen unless there was somewhere from somebody an order.

Mr. LEWIS. No. There is one letter where a woman says she is getting two copies of the paper; but she thinks that her neighbor has paid for it, although she herself had subscribed for it.

Mr. GLASSIE. Good thing; push it along.

Mr. LEWIS. Yes. You take a 1 per cent error and you have 20,000 errors a month. Just think of it.

Gen. MADDEN. Yes. It appears from the records that you mailed of the Woman's Magazine between September 20 and September 30, 651,155 copies to plain subscribers; and of the same issue 464,055 copies as samples. One month later you mailed of the Woman's Magazine 1,553,425 copies to subscribers and of that same issue sample copies to the number of 96,310. That means that your subscription list was increased in a period of thirty days 903,000—

Mr. LEWIS. Well, that can not be correct. There must be an error in the figures. There never has been a month in which we have mailed less than 1,500,000 copies in the last three years. That would show—

Gen. MADDEN. It also shows that the number of sample copies decreased 377,000. How do you account for that?

Mr. LEWIS. Like the \$1,000 error in the addition in our financial statement. Perhaps Mr. Wyman has the receipt. We never have less than a million and a half.

Gen. MADDEN. Well, now, you say that the balance of that October issue was mailed the first part of October.

Mr. LEWIS. They only allowed us 1,115,000.

Gen. MADDEN. Where are the other four or five hundred thousand?

Mr. LEWIS. The rest of them were probably mailed over in October. We could not possibly have mailed our full issue in 10 days. It has never been done on the

Woman's Magazine. It takes from 12 to 14 days. Now, here they have only given us credit for 10 days' mailing. We probably finished the 5th or 6th of October. That gives you the answer right there. I can give you the mailing for that issue; the October issue of 1905 was 1,574,625.

Mr. GLASSIE. Then not more than half of that could have been sent.

Mr. LEWIS. This would not show the samples. That is the report of the National Advertisers' Association.

Mr. GLASSIE. Do you mail more pounds of sample copies then—

Mr. LEWIS. He would jump on us in a minute.

Mr. GLASSIE. That brings in this question where in sending your papers to one place you bunch in your samples.

Mr. LEWIS. There would not be very many.

Mr. GLASSIE. It is as broad as it is long; you can not sack them separately, because it would mean nearly 1,000 additional sacks. The reason you did not sack them separately is that you can not afford to change your system.

Mr. LEWIS. They would not furnish the sacks for us. We would have some sacks with one or two copies.

Mr. GLASSIE. How is the postmaster to keep track of the number of samples when he weighs by the sack? Are these sacks broken up?

Gen. MADDEN. They are not broken up—

Mr. LEWIS. They are not broken up until they get to the post office. I do not suppose that that would amount to ten or fifteen thousand copies. Then you must remember that you have got your own post office employees in our mailing room. He knows everything we are doing, or at least he ought to. He is watching it all the time. We have a postal substation right in our mailing room.

Mr. WYMAN. We have a number of stations.

Mr. GLASSIE. Where the weighing is done.

Mr. LEWIS. They know what they are doing.

Mr. GLASSIE. You use the ordinary method in weighing the sacks. Receipts are given for the weight of each sack and footed up during the day.

Mr. LEWIS. They watch us all the time. During the process there is one of your clerks there.

Mr. GLASSIE. That is not the point. Your stuff is sacked for routing and it is weighed by the sack, and you get a separate receipt for each sack.

Mr. LEWIS. No; every mailing.

Mr. GLASSIE. Well, that is kept on the books.

Mr. LEWIS. We deposit a certain amount of money, \$500 every day, say, and they check against that.

Mr. GLASSIE. By what system do they tell what proportion is samples?

Mr. LEWIS. They would know, because the samples as a general proposition would be almost as carefully put up as the subscriptions; in other words, to a large extent, by towns and cities, and everything of that sort, and done up as carefully almost as the subscriptions are. When we are mailing samples the bulk of them are mailed as such in a bunch.

Mr. GLASSIE. Sacked as samples?

Mr. LEWIS. Yes. We may find out that we have less bona fide subscriptions than our required number, and we may stick in a few more samples to make our million and a half. On May 14 we had 19,000 subscriptions come in one day; we found our subscriptions so heavy we had to cut our samples. We did not send out so many because a whole lot of new subscriptions had to go in. Your clerk is right there; he knows what everything is.

Gen. MADDEN. You maintain a given circulation by adding a certain number of samples to your number of bona fide subscriptions and on this you base your advertising?

Mr. LEWIS. We guarantee to the advertiser that the circulation will not be less than a given number. It might be three-fourths bona fide subscriptions and one-fourth samples. It might be 55 per cent bona fide subscriptions and 45 per cent samples for that month; it would depend upon the natural laws.

Mr. GLASSIE. You would not send out any more samples than would be necessary to fill the complement?

Mr. LEWIS. That is it. Nothing over a million and a half; we get nothing for it except the income from 10-cent pieces. Now, you see how that mistake might occur; you have only given part of the mailing.

Gen. MADDEN. That you submit as the explanation?

Mr. GLASSIE. How about the figures that have been presented to us, tending to show that the November issue maintained a regular circulation of a million and a half?

Gen. MADDEN. What do you guarantee on the other paper?

Mr. LEWIS. Six hundred thousand.

Mr. GLASSIE. On the November issue it would appear from the receipts that you actually mailed of The Woman's Magazine 553,425 copies as subscribers' copies.

Judge BARCLAY. General, suppose we have done that for a particular month, and while he (Mr. Lewis) is perfectly willing to answer the question, it is a great hardship in the situation, because of the fact that there was an indictment. It has been postponed and has never been brought to trial; and notwithstanding that matter was pending, our learned friend, the postmaster, took the matter in his own hands before the case could be examined.

Mr. GLASSIE. I withdraw the question.

Judge BARCLAY. He is at liberty to answer it if he wishes.

Gen. MADDEN. The records show that the question is withdrawn.

Mr. WYMAN. I am taking no part in this discussion, but there is something very vital that occurs to me; I will ask you to state again what you said about "our learned friend."

Judge BARCLAY. The postmaster at St. Louis has determined that a certain figure, our right and privilege of the second class, is given as the figures that he considers define the lines of limit. I do not know upon what basis he has figured that out.

Mr. GLASSIE. It is not strictly relative. He might have had a thousand million subscribers in October and November, so it is not material.

Mr. WYMAN. May I explain my interruption? I rather inferred from what you said, or I got the impression that you insinuated that I had a part in the setting of the time.

Judge BARCLAY. Oh, no.

Mr. WYMAN. I would not allow this hearing to go on with that impression.

Judge BARCLAY. I suppose he had nothing to do with the setting of the time.

Mr. LEWIS. I wish to refer, General, to this bunch of questions—one of those papers which you handed me, where you showed right on the face of it that the figures were incorrect. We have got the receipt for mailing a million and a half. Where are the other five hundred thousand?

Gen. MADDEN. I want to get your explanation. That goes into the record.

Mr. LEWIS. Are there any other questions you want to ask?

Gen. MADDEN. It is very important that we shall not ask you any question that has any bearing on the case pending in the court, directly or indirectly.

Mr. WYMAN. I would be very sorry to have anyone connected with this here ask such a question that would have any bearing, as you say.

Gen. MADDEN. This hearing has been upon the issue raised by yourself, in which you asked to be heard on an appeal, and incidentally the other questions relating to back matters that would be helpful in perhaps determining questions, but in so far as it affects the case that is now pending in St. Louis we ask no questions whatever.

Mr. LEWIS. We understand that perfectly. General, in that connection I would like to say that there is no doubt in my mind that could these questions have been put to us plainly and fairly some time ago, and we had been given an opportunity to explain matters that are in doubt, as any old chicken thief gets, don't you know, we could have probably removed any necessity for indictment and the loss of a few hundred thousand dollars. There is one thing I want to bring up which I am not laying at this office's door at all, but at the door of the three inspectors, who have started this thing for the purpose of malice and to make good on what they tried to do before. Now, General, there is one thing I want to say. For one mortal year this institution has held over it the threat of instant annihilation on the part of this great Government. It has cost us half a million dollars, and there is no telling how much more money it will cost us before we get through; our credit is annihilated, and yet look at the situation. Here is an institution with millions of dollars of assets which can not be run away with, with millions of dollars at stake. In this proposition there are men amongst the foremost, the most intelligent, the most responsible in St. Louis—its board of directors is composed of men whose integrity has never been questioned—and on the other side stand two or three post-office inspectors making secret charges. We have been treated as condemned and convicted criminals in advance of any hearing, and what I want to ask you—

Gen. MADDEN. You are not being tried here as a condemned criminal at all.

Mr. LEWIS. General, when they held up our mail the other day, when they held up three carloads of the Woman's Farm Journal and our advertisers complained; and when we inquired of the inspectors they said, "Yes, we have them down stairs;" we said, "What are you going to do with them?" They said, "None of your business." We refunded the advertisers their money for that issue; there was nothing else to do. We were treated as condemned and convicted criminals at that end of the line. I am referring to those inspectors, who seem to have entire charge now. I want to ask you for a clean-cut, separate, and immediate settlement of this question. Every hour that *this thing hangs over us* it is costing us tens of thousands of dollars. I am not speaking for myself, I am speaking for twenty-five or thirty thousand stockholders, who in the face

of every charge that has been brought against me, have followed with their money and their spunk. You ought to cut me out, at least on this proposition, and think of the thousands of innocent investors. We are coming in a few days to the mailing of another issue. Must we put up another \$7,000 cash when the leading citizens of St. Louis, under their oath, have testified to this; the American Advertisers' Association's experts have testified to this; every officer and director is ready to testify, and if we defraud your Government out of a few thousand dollars, we have a million dollar plant out there and not a dollar of debt; we are good for it. The last thing I looked at when I left St. Louis was a great, big, old iron flagstaff in my yard, about a hundred feet high, and when they published that fraud on me I hoisted the United States flag, and we have got a new flag. There is just one star left of that dear old flag. We never pulled it down. We do not know whether to hoist a new one up-side-down or right-side up.

I will now ask Mr. Kramer to make a few remarks. He represents the stockholders.

MR. KRAMER: Gen. Madden, I think it is wholly unnecessary for any remarks to follow Mr. Lewis, because I can not conceive of the possibility of anybody more ably, more intelligently, and more conclusively representing the stockholders of the Lewis Publishing Co. in a manner that would bring forth from them their highest and greatest approval. I have known Mr. Lewis for 10 years. I do not come here in defense of any financial interest that I have in the man, because God knows, so far as money is concerned, he has nothing he can buy for me but what I have already. I came here as a stockholder and his friend, and I have been in this office before. We have always received the most courteous and kind consideration in this office, and we have gotten out of it an absolutely square deal upon every proposition that we have brought before you. I believe as a stockholder in the Lewis Publishing Co. and representing the interests of some 35,000 stockholders that we are going to get a square deal out of this office. I believe that if there are any facts that Mr. Lewis has stated to you upon which your mind is not entirely clear that you will take such means to satisfy yourself that these facts will be made clean and clear to you without bringing into the case any element that may develop as the result of the feeling on the part of those who have caused Mr. Lewis and his enterprises so much trouble. And in that belief, Gen. Madden, permit me to say to you that we would like to have the element of time considered. There are 35,000 stockholders whose money is invested in this enterprise who are depending upon the operation of the enterprise in order that that money may be productive of a profitable return. That money has gone into the enterprise of the Lewis Publishing Co. as the result of the confidence, of the belief on the honesty of and in the integrity of and the capability of Mr. Lewis, after he had been branded as a fraud and had been separated from his property by reason of the operation of a fraud order, in which the element of time has had an opportunity to let a little bit of God's own sunlight, and every one of the original propositions on which he was tried and at one time convicted have absolutely disappeared; and to-day he is supported by the decision of the Supreme Court of the State of Missouri, in which they say that the appointment of the receiver following the operation of the fraud order was absolutely illegal, unwarranted, and entirely uncalled for. May I urge upon you then to introduce into this proceeding the greatest effort possible upon your part in order that we may get an answer, that we may know where we stand, with some knowledge that will be for the best interest of the stockholders. I am not here for the purpose of urging that any distinction shall be made in favor of Mr. Lewis, but for the benefit of the people, some 30,000 of whom represent \$1,500,000 of money which they put into this enterprise in absolute good faith, thinking that this great Government under which we live would afford to them in the operation of their business the same liberties, the same privileges, the same rights that any American citizen has in carrying out what he believes to be his honest and his rightful duty. But it seems unfortunately that we as the stockholders of a concern have in some way called upon us the iron-clad hand of the old form of monarchical government, which says: "You have no rights except those rights which we interpret to be your rights, after we have had an opportunity through the inspection system of the Post Office Department to determine by which and from which your right shall be judged." We do not expect that in this office, and we are going back home with the belief—my heart believes it—that from this office we will get as quick and as faithful action as it lies within the power of human beings to give to our humble petition that such things shall be carried out, not in the interests of Mr. Lewis, but in the interests of 30,000 people and a million and a half of money, who are entirely dependent upon the conclusion arrived at from the facts placed before you as to whether their investment is worth dollar for dollar or whether it is not worth the paper on which it is written. Therefore I do not consider that you will take it as unfair, I do not consider that you will think we are trying to urge a con-

clusion of the case in advance of the ordinary routine of the office, when I ask to give to this important proposition all the expediency that you can.

Reference has been made from time to time to what we consider the unjust action of the post-office inspectors toward our rights. We still maintain it. We have got to maintain it until we get an opportunity where these conditions will be laid upon us, and we will be brought face to face with the people who are willing to accuse us of crimes that it seems when they are presented here, and the minute the facts applied to them a fair and square understanding such as should occur between businessmen, can be easily and quickly arrived at. May I state to you, Gen. Madden, in all sincerity, may I state to you, as voiced by the directors of this organization, as voiced by myself, we do not want a single cent of money or any returns of any kind unless it belongs to me honestly and fairly and squarely; that it is the highest reflection of our understanding of a manly and an honest duty to not only live within the letter of the law of the Post Office Department, but to have that unique distinction, if you please, sir, of living it to the full completeness of its spirit as well.

Mr. LEWIS. May I ask Mr. Stevens to just read a little additional data in connection with that presented yesterday? It was brought out by your inquiry in regard to other subscriptions, and as Mr. Stevens had charge of the original letters for the years 1904 and 1905, he of course would have detected everything of that sort in it.

Gen. MADDEN. I will be glad to hear Mr. Stevens.

Mr. STEVENS. I ask permission to add this to the statement which I read yesterday. The instructions to the six supervisors were to count only subscriptions about the general character of which no question arose in their own minds, and to bring to Mr. Lowenstein or to myself such subscriptions, either single or in lists, as seemed unusual or questionable. The effect of these instructions was to prompt close scrutiny of all of the correspondence. The letters and the lists on the face of them bore evidence that they came from the individual subscribers or from persons who had acted as agents in getting up clubs in their respective communities. The letters and lists, with very few exceptions, were in hand, not type, writing. The blanks, when subscriptions were made in that way, were filled out in endless variety of penmanship. The club lists were for the most part limited in number of names. They ranged from 10 to 30, with occasionally a list running from 50 to 100 addresses. It was noticeable that on many of these club lists were addresses of different towns and States, indicating that subscribers had subscribed for the magazine and Farm Journal, not only for themselves, but for relatives and friends in other places. We did not find in these original subscription papers of 1905 and 1904 any evidence that The Woman's Magazine and the Woman's Farm Journal depended upon or had any connection with business houses or advertisers to work up subscriptions. The letters and lists were, as they might be expected to come for these publications, without other inducement than the publications themselves and the regularly announced club rates.

Mr. GLASSIE. In that connection, Mr. Lewis, I would like to ask you one or two questions. Have you ever received—I do not refer to any recent period or any period in particular—have you ever received by way of subscriptions to your paper as great a number as 600 subscriptions from any one concern?

Mr. LEWIS. There is one man, Kulp, who will sometimes send us two or three thousand a week. This man has done nothing else for two or three years but travel around and get subscriptions. He goes into a town and cleans out the whole town.

Mr. GLASSIE. He gets the 50 per cent commission?

Mr. LEWIS. He goes into a town and cleans up the town.

Mr. GLASSIE. With the exception of Mr. Kulp, is there any other person?

Mr. LEWIS. Well, I should say that where you take those contests where we gave an extra premium to the one who would send us in the greatest number of subscriptions, that an agent might send in 1,500, 2,000, or 3,000 subscriptions.

Mr. GLASSIE. He would not send them in a day or a week?

Mr. LEWIS. Well, hardly, although he might. At the last day of the contest he might send in two or three thousand. In one of these letters here a gentleman says his son has gotten 1,200 subscriptions in another town. You will find that, because I am going to give it to you with these letters. "My son has just sent in 1,200 subscriptions;" he then goes on to say that he had paid for several himself in this list, to be sent to friends. That is the reason he wrote us the letter.

Mr. GLASSIE. What commission does he get?

Mr. LEWIS. He don't get any; some get 50 per cent. The letter is in here and you can correspond with them.

Mr. GLASSIE. Just one more question. Have you ever received as many as 500 subscriptions from any person or firm engaged in a considerable mercantile enterprise of his or their own?

Mr. LEWIS. Not that I know of, Mr. Glassie. You mean something like Sears, Roebuck & Co.

Mr. GLASSIE. Well, any large concern.

Mr. LEWIS. Sears, Roebuck & Co., or any of those mail-order houses, have never subscribed for a single copy. Mr. Asher has undoubtedly subscribed for 20 or 30 copies.

Mr. GLASSIE. If such were a fact, would you know it?

Mr. LEWIS. If such a thing was done, it would be done without my consent.

Mr. GLASSIE. Suppose some person would show you that he had sent in over 500 subscriptions—

Mr. LEWIS. We could absolutely find it out for you. If you will give me the evidence, we will find it for you.

Mr. GLASSIE. You could by the system you have—

Mr. LEWIS. Yes; you give me the name of any concern that says they have furnished us with 500 subscriptions, or 10 subscriptions, and I will give you the facts. Probably it will absolutely clear up the whole proposition.

Mr. GLASSIE. You are not personally aware of any such case at all?

Mr. LEWIS. No, I am not. In connection with that we bought a Chicago daily newspaper, bought their subscription list, the paper, everything. There are about 17,000 bona fide subscriptions, but that did not go on the journal or magazine, and it is a question whether it will go on the new daily.

Mr. GLASSIE. When is your new daily published?

Mr. LEWIS. We hope to begin the latter part of August. We are putting up the greatest plant in the world. It will be a plant in which we have a quarter of a million invested before we turn a wheel.

Mr. GLASSIE. Where is the plant located?

Mr. LEWIS. Opposite the magazine building. The ceiling is 32 feet high. The press will be 28 feet and guaranteed to print 5,000 a minute, that is 300,000 per hour. According to our calculations we will be able to publish that paper inside of 60 cents a year cost. That is the cost of production, including mailing.

Mr. GLASSIE. You do not mean including your news service, etc.?

Mr. LEWIS. I mean the expense of production of the paper and mailing it. That plant is contracted to be completed in July. It will probably be the 1st of August before it is completed. The press is now almost ready. It will be delivered in June. By the middle of July we ought to have the plant ready. We will have to run it a month before we can issue a daily newspaper. It is a stupendous undertaking, the greatest in the journalistic world.

Mr. GLASSIE. Let me ask you another question. Will your schedule of subscriptions show the proportion of 5 and 6 cent clubs, respectively.

Mr. LEWIS. Absolutely.

Mr. GLASSIE. Those received straight, direct from the—

Mr. LEWIS. You will find it all here.

Mr. GLASSIE. That is in Mr. Stevens's summary, is it not? I see it is in the schedule, but is there a summary of that?

Mr. LEWIS. Yes. I am leaving you the copies of the business men's report, etc.

Mr. GLASSIE. What is the number of 5-cent clubs received or renewed during the year 1905?

Mr. LEWIS. For the year 1905 there were on The Woman's Magazine new single subscriptions received, renewals, 6-cent clubs—there were 38,076; there were of 5-cent clubs 206,199.

Mr. GLASSIE. How many single subscriptions? That is, where one person subscribes for himself.

Mr. LEWIS. There were 278,411 new single subscriptions, where they sent them in direct in a separate envelope.

Mr. GLASSIE. Yes.

Mr. LEWIS. Then there were of single renewals 37,815.

Mr. GLASSIE. For my purpose they could be grouped together.

Mr. LEWIS. Now, of 6-cent clubs there were 38,076.

Mr. GLASSIE. In a whole year?

Mr. LEWIS. In a whole year. Of 5-cent clubs, 206,199; of other clubs, 17,926.

Mr. STEVENS. In classifying those where they did not send in the exact amount we made it five or six or more; there was nothing under 5 cents, so we put them down as other clubs.

Mr. LEWIS. Sometimes they did not send in the exact amount of money, so we called them other clubs.

Mr. STEVENS. They would send in too much postage and make it a little more.

Mr. LEWIS. Foreign subscriptions, 532, and subscriptions exchanged, 11,458. Life subscriptions, 270—do you understand life subscriptions, General?

Gen. MADDEN. No.

1172 EXPENDITURES IN THE POST OFFICE DEPARTMENT.

Mr. LEWIS. Two dollars pays for your subscription for life. The \$2 brings 10 cents interest per year; that pays for the subscription. When the subscriber dies we get the \$2.

Gen. MADDEN. You get them coming and going.

Mr. LEWIS. Yes. That gives you a total here for the year of 597,465 subscriptions received during 1905, nearly 600,000.

Gen. MADDEN. You have that summarized?

Mr. LEWIS. Yes.

Gen. MADDEN. In relation to the 5 and 6 cent clubs, do you mean that the publication was sold at that rate to readers?

Mr. LEWIS. No, no. It is what we get net. You take some of the dollar magazines and they do not come anywhere near getting that percentage net.

Mr. STEVENS. What they retain and send in—

Gen. MADDEN. Are you going to leave that with me?

Mr. LEWIS. I will leave it if we can get it in a few days.

Gen. MADDEN. Unless I can have it a week or 10 days—

Mr. GLASSIE. Well, I think a week or 10 days will be all right.

Mr. LEWIS. It cost us five or six thousand dollars to tabulate that.

Mr. GLASSIE. A week or 10 days will be sufficient.

Gen. MADDEN. It will be convenient for reference.

Mr. LEWIS. We claim it gives the most complete analysis of our subscription list that was ever made of any publication on earth.

Mr. STEVENS. I would like to have it left; I am rather proud of that.

Mr. LEWIS. If you call by wire on us for any number of bundles that are mentioned here, package No. 12, 44, anything that you want, we will send them on by express instantly, labeled and numbered, and then you can open these packages and compare the figures with those of the committee and absolutely verify everything.

Gen. MADDEN. Is that all you want to submit?

Mr. GLASSIE. Will you make a list of what you submit?

Mr. LEWIS. Exhibit A is a complete detailed tabulation of The Woman's Magazine subscriptions.

Exhibit B is a complete detailed tabulation of the Woman's Farm Journal subscriptions. These two are to be returned.

Exhibit C is a report to the chairman of the committee of investigation of the subscription lists of the Lewis Publishing Co. Retain.

Exhibit D is the report by the business men's committee to the Lewis Publishing Co., which you can retain.

Exhibit E is a supplemental report to the Lewis Publishing Co. by the business men's committee, which you can retain.

Exhibit F is an affidavit in regard to the management of The Woman's Magazine and the Woman's Farm Journal and its advertising, which you can retain.

Exhibit G is an affidavit in regard to the losses occasioned by the post-office troubles of the past 12 months, which you can retain.

Exhibit H is the affidavit and report of the American Advertisers' Association, which you can retain, with the certificates that go with it.

Exhibit I is the affidavit of Mr. Cabot in regard to new subscriptions since the 1st of January, which you can retain.

Exhibit K is expiration notices of competing publications. Retain.

Exhibit L, letters from large manufacturing concerns desiring to purchase subscriptions from us and turned down. You can retain that.

Exhibit M is samples of letters showing that the direct inquiry through postmasters by inspectors as to subscriptions to our publications does not develop the truth, but on the contrary would result in an absolutely false return. Please return L and M.

Exhibit N, some evidence of the way our subscribers' papers are being withheld throughout the country, to be returned.

Exhibit O, the only existing sample we have of subscription agencies offering the Woman's Magazine. Return.

Exhibit P is the statement of Hon. Walter B. Stevens. Retain that.

Exhibit Q, six months copies of each publication, which you can retain.

Exhibit R; the different forms of postal courtesies throughout the country.

Exhibit S; with your permission, General, I will give you a copy of a little booklet entitled "The Papers of the People."

Exhibit T; the facts as to the attempt to assassinate The Woman's Magazine; retain.

Exhibit U; the humble request of the officers and directors of the Lewis Publishing Co. for the return of their money paid in excess postage.

If there are any questions that come up in the study of this matter further on your part, if you will have the kindness to wire me the question, I will reply if it takes the telegraph office all day to answer.

Gen. MADDEN. If there is anything I am in doubt about you will have an opportunity. Mr. LEWIS. Thank you.

Judge BARCLAY. We wish to express our thanks for the courtesy and liberality you have shown us in the matter of time and careful attention given to us. We must express our thanks for that. We simply ask now that if there is anything obscure or doubtful, that we may have a chance to make it clear if we can do so, and that afterwards you will inform us through your own office or through your counsel here, for whom we have a great regard—we will try and make it clear as we can. We express our thanks individually for your courtesies.

(Hearing closed at 5.20 p. m.)

Perhaps that statement was made necessary by the advice of the Assistant Attorney General for the Post Office Department, who informed the Postmaster General in his memorandum dated March 28, 1906, that—

I am afraid there may be a little confusion at this point as to the years. The action of the Postmaster General ruling the publications out of the second class was on March 4, 1907, and the memorandum I am now referring to, to the Postmaster General, is dated March 28, 1906.

In that memorandum the Assistant Attorney General says:

The *Woman's Farm Journal* and *Woman's Magazine* are entitled to transmission in the mails as second-class matter until they shall have been excluded from that privilege after a hearing according to law.

A copy of the Assistant Attorney General's memorandum to the Postmaster General of March 28, 1906, is already in the record, as an exhibit, in connection with the doctored ruling of the Third Assistant, dated March 30, 1906.

The following is the statute requiring hearings:

When any publication has been accorded second-class mail privileges, the same shall not be suspended or annulled until a hearing shall have been granted to the parties interested. (Act of March 3, 1901.)

I was myself consulted by the chairman of the Post Office Committee in the House concerning the language and purposes of this statute before it was enacted. Its language shows its purpose. It was to protect publishers from hasty or ill-considered action by a postmaster or by the department, and to prevent the striking down of an enterprise without warning.

Mr. AUSTIN. Did you ever know of the department striking down a publication without warning, outside of this case?

Mr. MADDEN. No, sir; not outside of this case.

Mr. BRITT. I think it important that this statement should be made at this stage for the information of the committee. One of these publications, to wit, the *Woman's Magazine*, had had an application pending for admission to the second-class mail privilege since the 22d of August, 1902, before the Third Assistant Postmaster General, and it had never been acted upon. They had been in the meantime temporarily enjoying the second-class rate. That question was afterwards adjudicated in the United States District Court for the Eastern District of Missouri, the court holding that the publication was not under the act of 1901 entitled to a hearing, and that decision was afterwards affirmed by the Circuit Court of Appeals for the Eighth Circuit.

Mr. MADDEN. I beg to correct your statement. That decision was not affirmed by the Circuit Court of Appeals. The decision of the Court of Appeals said that it was a moot question, which it was not called upon to decide, as the publications had been readmitted to the mails.

Mr. BRITT. Now, then, I desire to place a statement next to that.

Mr. ALEXANDER. Let us proceed along the usual lines. We can not digress so much from the main inquiry at this stage.

Mr. MADDEN. I want to explain why that certificate was not issued in 1902, but I will come to that later.

Mr. ALEXANDER. I suppose all of these matters can be explained later.

Mr. MADDEN. The statement of the Postmaster General in his March 4 letters that his action, ruling both magazines out of the mails, was based upon a hearing, April 30 and May 1, 1906, gave the procedure the appearance of compliance with the requirements of that statute. The record, however, shows that his utterance was false as to the fact of a hearing having been given, and it was because he "could not wait," as he stated in another letter of the same date, which will later be placed in the record, for the formal compliance with that statute. The Lewis Publishing Co. enterprise, representing the investment of enormous capital, years of devotion and labor on the part of hundreds, and valued in millions, was, as a matter of truth, struck down by him March 4, 1907, his last official act before retiring from the Postmaster Generalship, without a hearing, without warning, and I charge it was in the furtherance of the object of the conspiracy to ruin that enterprise.

The Postmaster General alleges that his decision is based "upon a careful and thorough investigation of all the evidence by the department." The careful and thorough investigation to which he refers could scarcely be any other than the one conducted by the Third Assistant (it was the latest of record), unless he referred to the secret inquisition conducted by him under cover of that, as heretofore explained. At least "all the evidence" included that evidence. The following circumstance, then, is here important:

On March 4, at the same time as the Postmaster General was making his decision sustaining the St. Louis postmaster's recommendations to rule both publications out of the second class, his chief clerk wrote the Third Assistant, asking for "all records and papers of every kind" pertaining to the case. The records and papers which had accumulated constituted a great truck load, probably 500 pounds in weight. These documents were not taken from the Third Assistant's office until March 5, the day following the Postmaster General's decision, said in his letters of March 4 to be based "upon a careful and thorough investigation of all the evidence," and when the then Postmaster General was Secretary of the Treasury. A compared copy of the chief clerk's letter of March 4, calling for all the records and papers in the case, is herewith submitted, marked "Exhibit No. 37."

EXHIBIT No. 37.

MARCH 4, 1907.

THE THIRD ASSISTANT POSTMASTER GENERAL.

SIR: By direction of the Postmaster General, I have to request that there be sent to this office at once all records and papers of every kind pertaining to and bearing on the Lewis Publishing Co., of St. Louis, Mo., case.

Respectfully,

M. O. CHANCE, *Chief Clerk.*

Mr. AUSTIN. Where did you procure a copy of the chief clerk's letter?

Mr. MADDEN. It came to me officially, and I had a clerk to make a copy of it for me.

Mr. AUSTIN. You had a Government clerk to make a copy of it for you?

Mr. MADDEN. Yes, sir; and it was a perfectly proper proceeding.

Mr. AUSTIN. But an unusual one, was it not?

Mr. MADDEN. Yes, sir; but the circumstances were unusual.

Mr. AUSTIN. How was it that you severed your connection with the Government?

Mr. MADDEN. Because, on February 7, 1905—if you will wait a moment that statement comes along here a little later.

Mr. AUSTIN. All right.

Mr. MADDEN. Referring back to the quotations, it was "upon a careful and thorough investigation of all the evidence by the Department" that the Postmaster General found the publications did not have legitimate lists of subscribers. In the same letters he admits 539,901 "legitimate subscribers" for the Woman's Magazine, and 141,328 "legitimate subscribers" for the Woman's Farm Journal.

The investigation of the Third Assistant did not extend forward beyond the April, 1906, issues of the magazines. Whatever new subscriptions might have been received, as in any going business between that date and March 4, 1907, when the Postmaster General acted, were not considered in the report of the Third Assistant's commission. Between those dates 11 months had elapsed. In that time in any thriving publishing business, the entire subscription list might have changed, even doubled in number, but this circumstance was not taken into account at all.

Mr. AUSTIN. Do you say that the entire subscription list would change in 11 months?

Mr. MADDEN. Yes sir, in most publications.

Mr. ALEXANDER. You do not mean that the entire list would change? Do you know of instances where it has happened?

Mr. MADDEN. I can say that I am a publisher myself, and I know that a great many changes can take place in that time, especially where a special effort is being made to secure new subscriptions.

Mr. AUSTIN. I do not think it possible that an old established newspaper, or a growing newspaper, in 11 months would have a complete change of subscribers.

Mr. MADDEN. I do not think so either. So far as my statement there is concerned, that may have been somewhat of an exaggeration. Now, as if to make the matter still worse, the Postmaster General, in ruling the publications out of the second-class, March 4, 1907, because they did not have legitimate lists of subscribers, not only totally disregarded the count and findings of the Third Assistant's commission as to the state of the subscription list in April, 1906, but sustained the finding of the St. Louis postmaster as to the state of the lists in October, 1905, 16 months before.

Let me state the matter in a different way. The St. Louis postmaster alleged that he found in October, 1905, 539,901 legitimate subscribers for the Woman's Magazine, and 141,328 legitimate subscribers for the Woman's Farm Journal. These he admitted were "legitimate subscribers."

Mr. AUSTIN. Now, they went to the returns or the subscription books of the Lewis Publishing House, at St. Louis, and the Postmaster General—

Mr. MADDEN (interposing). I beg your pardon, I do not quite understand that.

Mr. AUSTIN. He went beyond all that with the inspection to determine whether these were bona fide subscribers on these lists, and they ascertained from that investigation that they were not.

Mr. MADDEN. I beg your pardon.

Mr. AUSTIN. That charge of the postmaster at St. Louis was sustained.

Mr. MADDEN. I will state the matter accurately again: I have said before, the action of the Postmaster General on March 4, 1907, excluding the publications from the second class because they did not have a legitimate list of subscribers was based upon an alleged count made by the postmaster in October, 1905, a period of 16 months before, during which time the list might have been doubled, or during which time it might have decreased as well. Certainly it was not stationary at 539,901 in March, 1907, as it was in October, 1905.

Mr. ALEXANDER. How many legitimate subscribers did the Postmaster General find, according to these reports?

Mr. MADDEN. In October, 1905, the postmaster at St. Louis reported that the Woman's Magazine had 539,901 legitimate subscribers. The postmaster admitted that the Woman's Farm Journal had 141,328 legitimate subscribers. That was in October, 1905.

Mr. AUSTIN. The postmaster at St. Louis in his report stated that the Lewis Publishing Co. had been defrauding and swindling the Government for months, and that they were sending out thousands of copies to people who were not legitimate subscribers, but who were secured by selling advertising space in that paper.

Mr. MADDEN. He made that statement upon an alleged investigation in October, 1905. That was followed by an investigation in 1906, due to these allegations and charges, and a commission made a count of his original orders, and ascertained and reported the two figures at that time. These figures were altogether different, and the commission spent three and a half months in making the count.

Mr. AUSTIN. Now, this commission went over the books and documents and made this count, but when the postmaster at St. Louis, charged with this duty, and who was a sworn officer of the Government, made his investigation and count and reported that to you, you did not stop to verify it, but you reprimanded him in the severest manner for the performance of his sworn duty in that regard.

Mr. MADDEN. When he charged that there were frauds being perpetrated by the publishers I sent his letter to the Postmaster General, as the record shows, and asked for instructions, but he gave none.

Mr. AUSTIN. But, referring to the other letters, containing his specific charges of fraud on the part of these publishers, instead of verifying them, you turned loose a sharp reprimand upon him?

Mr. MADDEN. I did, sir, for his insolence.

Mr. AUSTIN. And you paid no attention to these charges?

Mr. MADDEN. I beg your pardon, I did—

Mr. AUSTIN (interrupting). You did not follow them up to investigate them to ascertain whether they had been doing what was charged?

Mr. MADDEN. I beg your pardon, I have made a statement—

Mr. AUSTIN (interrupting). Upon that point?

Mr. MADDEN. Here is what I said: Prior to April 14, 1906, every communication from the postmaster in regard to this case was sent to the Postmaster General with a memorandum, as the record will

show, asking for instruction, but, in view of the extraordinary circumstances already related, he issued no instructions for five months, during which time all the communications and reports relating to this matter were being sent to him. Now, then, in April, 1906, when the Postmaster General turned the case back to me to be handled in the usual manner, it was arranged that we should send a commission out there to ascertain the facts as to these charges.

Mr. ALEXANDER. I think all of these facts are in the record.

Mr. MADDEN. Yes, sir; they are.

Mr. ALEXANDER. I suggest that we proceed with the statement of Mr. Madden.

Mr. AUSTIN. But you jumped on the postmaster there for performing his duties under the postal laws and regulations, but you did not jump on the Lewis Publishing Co. when its practices were evidently not in the interest of the Government service.

Mr. MADDEN. I jumped on the postmaster for his insolence and insubordination.

Mr. AUSTIN. You thought that of more importance than this charge of swindling and defrauding the Government?

Mr. MADDEN. The record speaks for itself on that matter.

Mr. BRITT. The publications were excluded for three reasons. I believe that has not been brought out yet.

Mr. ALEXANDER. Will not that be a part of your case? I suggest that you bring that in in its regular order.

Mr. BRITT. They were suggesting the matter of subscriptions only.

Mr. AUSTIN. There were three reasons for which this paper was excluded from the mail?

Mr. MADDEN. Yes, sir; that they did not have a legitimate list of subscribers, that it was designed primarily for advertising purposes, for free circulation, or for circulation at nominal rates. Now, I will have a statement to make in that connection later on. The Postmaster General said they did not have a legitimate subscription list—

Mr. AUSTIN (interposing). As the postmaster at St. Louis had stated?

Mr. MADDEN. Yes, sir; it appears from the record that the Postmaster General admitted that there were 539,501 legitimate subscribers to the Woman's Magazine, and 141,328 subscribers to the Woman's Farm Journal, which he said was not a legitimate list of subscribers.

Mr. AUSTIN. Are you quoting from the report made up by these clerks?

Mr. MADDEN. No, sir; the Postmaster General's own record.

Mr. AUSTIN. And he is reporting from the report made to him by the clerks in that office?

Mr. MADDEN. No, sir; you are confusing the issue here again. The Lewis Publishing Co. appealed from the action of the postmaster, and the Postmaster General then sent the matter to me on April 14, 1906. Now, then, they were heard because they had asked to be heard, and the result was that we sent a commission out there for the purpose of counting the subscriptions, because that was in question—that is, how many subscriptions did they have for the months in question.

Mr. AUSTIN. Did you instruct the commission to go back of that and find out how many of these subscriptions were fraudulent?

Mr. MADDEN. There could not be any fraudulent subscriptions.

Mr. AUSTIN. I am referring to an illegitimate subscription list——

Mr. MADDEN (interposing). But there is no such thing. A subscription order may read, "I send you 10 cents or 25 cents subscription from such a date to such a date." What evidence have you but that subscription? What is fraudulent about it? That was the form of the order; it is in blank——

Mr. AUSTIN (interposing). That is one of the reasons that it was excluded.

Mr. MADDEN. The postmaster stated that 539,500 subscriptions to the Woman's Magazine were legitimate.

Mr. AUSTIN. Did not the investigation show that that list was not proper?

Mr. MADDEN. No, sir; he did not so find and he did not say so.

Mr. AUSTIN. But you say you do not know what that commission reported?

Mr. MADDEN. I will read the letter again, so you can not get away from it.

Mr. ALEXANDER. Do not repeat anything in the record. This record will be before us, and there is no use of all this.

Mr. MADDEN. I do not believe there is any.

Mr. AUSTIN. Did you not state in the very beginning of your statement that you invited questions and interruptions?

Mr. MADDEN. But, in deference to the wishes of the chairman of the committee——

Mr. ALEXANDER (interrupting). All these matters are in the record, and are subject to construction by the committee.

Mr. BRITT. My questions, Mr. Madden, were not intended to irritate you at all.

Mr. MADDEN. No, sir; and they have not irritated me in the least. I am irritated by the persistent efforts of Mr. Austin to confuse the issue here.

Mr. AUSTIN. I think that the attorney of this company can take care of his interests here, but I was given to understand at the beginning of the hearing that he did not object to being questioned while presenting his statement, and I will state to Mr. Madden that I will continue to question him upon this matter whether my course in that regard meets with his approval or not.

Mr. MADDEN. I had expected to find the committee open-minded to the presentation of this case.

Mr. AUSTIN. And I am very sorry that you were not open-minded when these questions were submitted to you in the department, while you were the Third Assistant Postmaster General.

Mr. MADDEN. I did not reflect on you; you are making that point here as the attorney of that department.

Mr. AUSTIN (interrupting). I would have been more loyal to it than you have been.

Mr. MADDEN. I think perhaps you may have been so.

Mr. ALEXANDER. I am going to suggest that this must stop.

Mr. MADDEN. I want to get all the evidence in. The question is, is this case right and was my conduct right.

Mr. ALEXANDER. Proceed with your statement.

Mr. MADDEN. Now, on March 4, 1907, the findings of the St. Louis postmaster as to excess copies and his recommendations to rule out

the publications are sustained by the Postmaster General. Both magazines are ruled out of the second class, and the business of the company is, without notice and without a hearing, closed down and destroyed, and the money on deposit for excess mailings is covered into the Treasury. This decision is based upon the very same number of subscribers for each magazine 18 months after the postmaster's count was made, as if there had been neither increase nor decrease in all that time, and this in the face of the count which required 65 persons three months and a half, and which showed that the numbers were not correct for October, 1905.

Be it remembered that unless the decision of the department sustained these figures of the postmaster for October, 1905, the indictments would fail for want of evidence, even if they had not misrepresented the form of the statute, and the money taken on deposit would have had to be returned to the company. Be it remembered, too, that this is the only instance in the history of the postal establishment where the Postmaster General interfered with the due course of administration of the Third Assistant, who had by lawful regulation jurisdiction of the entire subject; and that, as the record shows, to give the appearance of being handled "along the usual lines" and not in violation of the regulations, it was in the scheme to have this action taken by the Third Assistant; that in order that he should do the right thing every communication and every act of his was required to be submitted to the scrutiny of the Postmaster General. Be it remembered, too, that Fulton in St. Louis was the direct personal representative of the Postmaster General. Later I shall place in the record a statement by an independent investigator to the effect that Fulton claimed to be the brains of the case; that the St. Louis postmaster stated that he did not write a single letter in the case. They were all written by Fulton. If we are permitted to put the people in the Post Office Department on the witness stand under oath we shall show that Fulton was hustled from St. Louis to Washington whenever there was an important letter to be written on the case by the Postmaster General.

Mr. AUSTIN. Whom do you want as witnesses?

Mr. MADDEN. The people in the department who know how often Mr. Fulton was here.

There is no evidence as yet that Fulton wrote the February 13 "memorandum" of the Postmaster General to the Third Assistant, demanding the reversal of the ruling of February 7, but no person can read that memorandum in connection with the St. Louis postmaster's letters and the Postmaster General's letters and not find the earmarks of the same writer in all.

Speaking to 400 jurists and lawyers at a meeting of the New York State Bar Association, January 19, 1911, the present Attorney General warned against the popular tendency to distrust the various branches of the Government. Perhaps it may not be out of place here to suggest that the record in this case, if not disproven, shows there is proper cause for popular distrust of at least two branches of the Government.

The decision of the Postmaster General, putting the magazines out of the mails, was made while the company's statement was on file in the department that it was not knowingly violating any law, regulation, or rule, and that it would, upon notice, make prompt correction

of anything found which seemed to be an irregularity, either in its subscription list, the price charged for subscription, the amount of advertising carried, or otherwise.

It was the practice of the Third Assistant, when a case was being handled "along the usual lines," as shown by the various published regulations, circulars, and the Conant case, already in the record, to allow all publishers an opportunity to correct any irregularities of practice so as to come into conformity with the law as interpreted in the reform of the second-class abuses which he was conducting.

This Postmaster General retired from office at noon on March 4, 1907. A few minutes later, he became Secretary of the Treasury. It was during the forenoon on March 4 that he acted on the case of the Lewis Publishing Co.'s magazines, and it was during the forenoon that he directed his chief clerk to call upon the Third Assistant for all the records in the case. It was during this same forenoon that he wrote a letter to the Third Assistant, a compared copy of which is now filed as Exhibit No. 38.

EXHIBIT No. 38.

OFFICE OF THE POSTMASTER GENERAL,
Washington, D. C., March 4, 1907.

SIR: The memorandum submitted by you in the evening of March 2, in reply to the inquiries and criticisms made in my memorandum to you of February 13 in the matter of your findings upon the question whether mailings of *The Woman's Magazine*, and *The Woman's Farm Journal*, of St. Louis, Mo., between October, 1905, and May, 1906, were in excess of the number which the publishing company was entitled to mail as to subscribers and as sample copies, at the rate of 1 cent a pound, is before me. This communication consists of 158 typewritten pages, and by reason of its great length and of its submission less than two days before the date fixed, and well known to you, for my retirement from the office of Postmaster General, it is impossible for me to comment upon it in detail at this time. Inconsistencies, evasions, and statements flatly contradictory of each other run through the whole length of the communication, and the explanations and excuses offered in support of the position which you have taken are so flimsy and so lacking in every element of common sense and reason that it is amazing that an officer of your experience and assumed knowledge of the subject to which the communication relates would be willing to take responsibility for preparing and submitting it to his official superior. You have obscured the situation by including in this voluminous communication a vast amount of irrelevant comment and numerous misleading and untrue statements. Your object seems to be to place the Postmaster General in a false position, and to throw back upon him the responsibility and discredit which attach to your inexcusable mismanagement of this whole matter.

On page 49 of your memorandum you say that "*The Woman's Magazine* and *The Woman's Farm Journal* have never been regarded as positive abuses, and certainly not 'specially flagrant' ones." This may be your judgment as to the character of these publications and the methods by which they are circulated, but it certainly is not the judgment of the Postmaster General or of the majority of the officers of the Post Office Department who have had most intimately to do with this investigation. You have said heretofore that the business of no publisher has ever been subjected to such raking scrutiny as has that of the Lewis Publishing Co. in respect of these two publications. You are not in position, then, to say with authority that there are other publishers who are more flagrantly abusing the second-class privilege than is the Lewis Publishing Co.; and your statement that such is true is mere assumption, and represents one of the methods by which you would appear to excuse the position you have taken in respect to the publications named.

You say on page 29, that on April 14, 1906, I sent you instructions which for the first time placed this matter in your charge. The memorandum quoted below completely refutes this statement:

JULY 12, 1905.

Memorandum for the Third Assistant Postmaster General.

Case Woman's Magazine (C. D. No. 26575) and Woman's Farm Journal (C. D. No. 58208), published at St. Louis, Mo., by the Lewis Publishing Co.

Please have investigation made along the usual lines pursued by your bureau to determine whether the Woman's Magazine and the Woman's Farm Journal are entitled to transmission at second-class rates. It is desired that you will have this investigation completed as promptly as may be consistent with your general practice and will bring the results to my attention.

Until such investigation shall have been completed it does not appear necessary to give the postmaster at St. Louis the instruction which you suggest in memorandum of the 8th instant, as continuance of the present practice will accomplish the same result.

GEO. B. CORTELYOU,
Postmaster General.

You explain that in conducting the inquiry into the publication methods of the Lewis Publishing Co. in respect of the Woman's Magazine and the Woman's Farm Journal unusual methods have been used. If this be so, then the responsibility for those unusual methods rests upon you, for in the memorandum just quoted you are directed to "have investigation made along the usual lines pursued by your bureau," and that it be "completed as promptly as may be consistent with your general practice." There was no reason whatever why you should not have proceeded with this matter strictly in accordance with your usual methods and practices, from and after July 12, 1905; nor is there any reason why the whole matter should not have been decided months ago. You have sought every possible excuse for postponing action. Repeatedly you have promised that the decision would be rendered at a certain time, but when that time arrived have declared that it was impossible to submit it until a certain subsequent time. Only by the utmost pressure upon you was I able to obtain your decision upon the question of excess mailings on the date of February 7. My memorandum, which was quite exhaustive, went to you on the evening of February 13, and you have consumed 17 days in replying to that memorandum. Your reply would not yet have been made had I not peremptorily demanded it and insisted absolutely upon having it not later than the evening of March 2. But for that insistence it would not have been received until after my retirement from this office.

On page 55 of your memorandum you say:

"Had the postmaster reported, as provided in paragraph 6, sec. 456, P. L. & R., that the publisher was mailing sample copies in excess of 100 per cent of his subscription list, or more copies than he was entitled to mail at the pound rate, or had the postmaster reported that he was holding excess copies, our action, if the case were being handled in the bureau of the Third Assistant Postmaster General, would have been to require the publisher, if he disputed the postmaster, to establish the legitimacy of his list of subscribers and the extent thereof, in order that we might determine whether he was mailing excess copies. Failing to prove his right to mail at the pound rate the number presented, we would require him to pay the transient rate on the excess, or on his refusing to do that and sustaining his right to the pound rate as provided in the act of March 3, 1895, we should then proceed in an orderly way to take up and determine the right of the publication to second-class rates at all."

As a matter of fact, the postmaster did report precisely what you say he should have reported, and it was your duty, under the instructions conveyed in my memorandum of July 12, 1905, to take up this matter in regular and orderly fashion and deal with it "along the usual lines pursued in your bureau" and determine whether both the publications were entitled to transmission at second-class rates. More than 18 months have expired since that direction was given you, and you have not yet decided the matter thus placed in your hands. Neither have you taken up the two matters in the order directed by my letter of April 14, 1906, which, indeed, was mainly a repetition of the direction given on July 12, 1905. In the latter communication it was said:

"You will please immediately institute an investigation for the purpose of determining whether the Woman's Farm Journal and the Woman's Magazine, issued by the Lewis Publishing Company, are entitled to second-class privileges; and if so, what number of copies of each publication should be admitted to the mails monthly at the rate of 1 cent per pound. This investigation should be thorough and comprehensive, and in pursuance of it the company should be afforded early opportunity to be fully heard upon the questions involved."

You have taken up these two questions in the inverse order, deciding that there have been no excess mailings by the company, but leaving undetermined the question whether the two publications are entitled to second-class privileges. No reason is given for this change in the mode of procedure directed by my letter; and you knew that at this late date I could not wait for your finding upon the question of the second-class privilege. You have discarded declarations of the president of the company made against his interest, the sworn statements of its employees and ex-employees, and evidence carefully and painstakingly gathered by honorable and experienced officers of the Post Office Department, acting under their official oaths, all of which would have been received as competent evidence in any court in the land. You state repeatedly that you have done this; that you went "to the heart" of the matter, and "found the facts." You assume to have found the facts, and it was your duty to find them, but it is palpable that you have not done so.

Your claim that you have been kept "entirely in the dark as to what was being done, save for the correspondence which was" coming to you and being transferred by you to the Postmaster General, is not in accordance with the facts, and can not be accepted as made in good faith.

To the accuracy of your statements on page 65, that "The question was whether or not the total number of copies mailed exceeded the total number of copies which the publisher was entitled to mail, including his sample-copy privilege," and that "There can be no excess mailings by a publisher so as to subject him to the transient rate unless the total of his mailings of the issue in question exceeds the combined total of samples and subscribers, giving him the benefit of one sample for every subscription," I take exception for reasons which were stated in my memorandum of February 13.

Your argument beginning on page 77, in support of your contention that the subscription price of these publications is so low that the company could not be justly required to maintain an adequate system of records and accounts will not stand the most superficial examination. You say there is no law requiring the publisher to keep such a system, or any system, and follow that statement with the declaration that the burden of proof is upon the company to show that its subscription lists are legitimate. Unquestionably the burden does rest upon a publisher to show that his subscription lists are legitimate, and if his records and accounts do not afford such proof, then he is not to be excused for failing to keep an adequate and proper system; but you propose to free the Lewis Publishing Co., nevertheless, from blame for failure to keep proper and intelligible records.

You say that what the postmaster at St. Louis did in pursuance of his inquiries as to alleged excess mailings by the Lewis Publishing Co., what the post-office inspectors found in the course of their investigations, what has been sworn to by employees and ex-employees of the company, what declarations have been made by the president of the company against its interests, what its published and presumably established rules were as to expired subscriptions, and in fact every other matter except the count of subscription letters made by your commission and the actual receipts of the postmaster showing weights of mailings, have received no attention or consideration from you whatever. That an officer acting in a quasi-judicial character, as you assume to be acting, should put out of view such material and important evidence and testimony is incomprehensible.

On page 122 of your memorandum you refer to the practice of certain stock journals, copies of which are mailed as going to subscribers, which copies in fact are ordered and paid for in large quantities by persons desiring to circulate them for reasons of their own, and which are mailed by the publisher to persons designated by such purchasers without orders from the parties addressed. You say it would be no objection to the enforcement of the regulations which forbids the counting of such alleged subscriptions as any part of the legitimate list of subscribers to say that other publications indulging in the same practice had not yet been dealt with, "because obviously all publications could not be dealt with as of one date. All that could reasonably be asked is that the department should be proceeding with due diligence so to deal with them." There is a clear distinction to be drawn between the practices of these stock journals and those of the Lewis Publishing Co. in that the alleged subscriptions for the former publications were ascertained to be ordered and paid for by others, while in the case of the Woman's Magazine and the Woman's Farm Journal large numbers of copies of the publications were going as if to subscribers which were not paid for at all. In respect of the stock journals in question, however, you have from me, under date of February 12, 1907, a letter reading as follows:

SIR: Upon the statement by you last summer that your duties in connection with the preparation of the data for the Postal Commission and the fact that such a commission had been authorized by Congress would make it impracticable for you to take up and consider as in the usual course certain cases involving alleged abuses of the second-class mailing privilege, I approved of a postponement of action in such cases until

the commission had made its report. Included among the cases of which the consideration was thus postponed were those involving certain stock journals passing in the mails as second-class publications and which in your opinion were probably abusing seriously the privilege accorded to them.

As the report of the Postal Commission has now been made and submitted to Congress, it is my desire that all cases involving alleged abuses of the second-class mailing privilege be taken up by your office as promptly as possible and considered, and that there be no hesitancy about excluding from the mails as second-class matter all such publications as are found to be abusing that privilege in such manner as to violate the law and to subject the Post Office Department to losses of revenue. Each of these cases should be dealt with upon the ascertained facts and without reference to any other consideration than whether the methods and practices pursued are not violative of law and there is not resting upon the Post Office Department the duty of excluding the publication from the second class of mail matter.

Respectfully, yours,

GEO. B. CORTELYOU,
Postmaster General.

You seem to feel that you are forbidden to deal with ascertained irregularities and illegal practices upon the part of the Lewis Publishing Co. because other publishers indulging in like practices have not been so far molested. I have no knowledge of any other case in which the second-class privilege is being so grossly abused as the Lewis Publishing Co. is shown to be abusing it. If you know of such cases and have not used your authority to put an end to them, then you have failed in your duty. If during your incumbency of the office of the Third Assistant Postmaster General, covering a period of eight years, you have been aware of the existence of such conditions, and have allowed them to continue, then the point of your reiterated remark that "the department is not clean" is easy to understand. But if the cases of the Woman's Magazine and the Woman's Farm Journal are merely representative of a class, as you declare, why is it not fair, in correcting the abuses prevalent in such class, to begin with these publications? You admit that all cases belonging to a class can not be disposed of "as of one date," and that a "all that could reasonably be asked is that the department should be proceeding with due diligence so to deal with them," and yet you have refrained for eighteen months from taking any definite action against the Woman's Magazine or the Woman's Farm Journal, purely for the reason that they are members of a class, and that many of that class have not yet been taken up. You declare your belief that these publications are violating the spirit of the law and the established regulations, and yet you are not even willing to require that they pay postage upon mailings which are clearly in excess of the legally authorized number.

Your claim on page 130 that this matter "had long been handled independently of the Third Assistant Postmaster General," is not true, for the whole matter was placed in your hands definitely and positively by my memorandum of July 12, 1905, of which my letter of April 14, 1906, was little more than a repetition.

On pages 138 and 139 you say:

"The whole question as to whether excess copies were mailed depended upon whether the publisher was entitled to carry expired subscriptions. Without them he would have mailed excess copies; with them he did not. This publisher had as much right as any other publisher to carry expired subscriptions; yet we have no rule or limitation which we could have applied to such a situation as that found in his case, merely to determine that there were excess copies mailed. We would, however, be justified in holding that a list of subscribers so largely made up of expired subscriptions, especially for such a cheap publication, and their being carried for such a length of time, vitiated the whole list, and that therefore there was not for the publication a 'legitimate list of subscribers,' as required by law."

You seem here positively to decide that neither of these publications is entitled to exercise the second-class mailing privilege; because an essential requisite of such a publication is that it have a "legitimate list of subscribers." I am quite unable to see how you can consistently so hold and yet take the position unqualifiedly that the action of the postmaster at St. Louis in collecting postage upon copies going to subscribers who are not legitimate, and upon sample copies based upon them, should be reversed. Neither am I able to grasp the finespun distinction which you make between a "legitimate list of subscribers" and a list composed of legitimate subscribers. You have declared by regulation that the list must be "legitimate in its entirety," and if that requirement means anything, it means that all the subscriptions embraced in the list shall be legitimate. A legitimate list of illegitimate subscribers is inconceivable and a palpable absurdity. Not only do subscriptions which are not legitimate vitiate the list of a publisher, but there is clearly no right in law to send copies

of a publication in pursuance of such subscriptions at the pound rate. To accord the privilege to the publisher of sending such copies at the transient second-class rate is a distinct concession, and if there be any question at all as to this matter it can be only whether the third-class rate should not be demanded upon such copies rather than the transient second-class rate.

Of course, you know that in all the dealings of the Post Office Department with the Lewis Publishing Co. my attitude has been that absolute impartiality should be shown and that the company should be treated with all fairness and in strict accordance with justice and right. Your insinuation, therefore, that any question of personal feeling toward the company or its officers by reason of criticisms made upon the Post Office Department, or for any other cause, has been permitted to enter into my consideration of this matter is absolutely without any warrant or excuse whatever.

You refer to an error in the report of the postmaster at St. Louis of April 23, 1906. The records show that he notified you of the correction of said error on August 31, 1906, which was long before you began the preparation of your decision of February 7, 1907, in the matter of excess mailings. You make no mention of said error in that report, and this indicates quite clearly that you had received and used the corrected figures and that the error had not entered into your consideration of the case.

I am not able in the brief time remaining before my retirement from this office to comment in further detail upon the matters set forth in your memorandum by way of excuse or explanation of your action. I shall, however, give them further attention later and see that the results of such attention are embodied in the official records of the Post Office Department.

Since the preparation of the foregoing, you have increased the number of pages in your memorandum by eight and have renumbered them accordingly.

Your memorandum of October 14, 1905, to me, and my letter of November 6, 1905, to Mr. E. G. Lewis, to both of which you now refer on page 163, do not require comment at this time.

Very respectfully,

Geo. B. CORTELYOU,
Postmaster General.

Hon. E. C. MADDEN,
Third Assistant Postmaster General.

This letter is long—13 typewritten pages. It will not be necessary to quote extensively from it. A summarization of its contents will answer. A quotation from this letter has already been placed in the record.

It was the letter of the Third Assistant, dated March 2, 1907—164 pages—which made this letter of March 4 necessary. The record was in bad shape. Apparently, the Postmaster General had not been taking account from time to time of the record which was being made during those two years. He now saw for the first time how the case would look if it were ever fully investigated. This letter was to load responsibility on the Third Assistant.

Mr. AUSTIN. Please refer to that again; Judge Towner asked me a question, and I did not catch what you were saying.

Mr. MADDEN. This was a letter of March 4 from the Postmaster General, in which he undertakes to load the responsibility for this thing upon the Third Assistant Postmaster General, including his own acts. In other words, it was a letter to cover his own tracks in the case. This letter is a long one, containing 13 typewritten pages.

Mr. AUSTIN. Are you going to put that in the record?

Mr. MADDEN. Yes, sir. I will repeat my statement in regard to that: It was the letter of the Third Assistant, dated March 2, 1907, containing 164 pages, which made this letter of March 4 necessary. The record was in bad shape. Apparently, the Postmaster General had not been taking account from time to time of the record which was being made during those two years. He now saw for the first time how the case would look if it were ever fully investigated. This letter was to load responsibility on the Third Assistant.

This letter of March 4 from the Postmaster General, therefore, charged the Third Assistant with inconsistencies, evasions, contradictory statements, and with making flimsy explanations and excuses in support of the position he had taken in his March 2d letter and charged him with having written it with the object of placing the Postmaster General in a false position and throwing back on him the responsibility and discredit which was attached to his (the Third Assistant's) "inexcusable mismanagement of the whole matter."

Speaking now for the then Third Assistant and by his authority, it is here admitted that from the standpoint of the Postmaster General the whole matter was inexcusably mismanaged. Concerning this charge, the record speaks for itself.

As the record and the exhibits in the case will show, the question determined by the Third Assistant on February 7, 1907, and affirmed March 2d following, was a simple numerical one; namely, first, how many copies of certain issues of the Woman's Magazine and Woman's Farm Journal were mailed? This was determined by the special investigating committee and from the post-office records themselves. Second, how many subscribers were there for those issues? If the number of copies mailed were not more than double the number of subscribers for the same issues, counting one by one the original written orders of the subscribers themselves, there was no excess mailings as alleged in the indictments and under the rule applied by the St. Louis postmaster. That was the only question which the Third Assistant had so far decided. How the Postmaster General could find inconsistencies, evasions, contradictory statements, and excuses in support of the position taken by the Third Assistant in deciding this simple numerical question will not be easy to find out. If there should be some investigation of this matter in the future, these charges against the Third Assistant by the Postmaster General might help the record in his favor in the event the matter were not probed too deeply.

MR. AUSTIN. What were the charges against you?

MR. MADDEN. I have just read them.

MR. AUSTIN. In that letter?

MR. MADDEN. Yes, sir; I have quoted from his letter; that is the substantial part of it.

The Postmaster General then goes on to contradict the Third Assistant's statement that unusual methods were employed in the case, and says that if so the Third Assistant was responsible, for away back on July 12, 1905, he had placed the case with him to have an "investigation made along the usual lines pursued by your bureau," and to be completed as "promptly as may be consistent with your (his) general practice." There was, he says, "no reason whatever why you should not have proceeded with the matter strictly in accordance with your (his) usual methods and practices after July 12, 1905."

The record which has so far been made, with the exhibits filed, speak for themselves as to the "lines," usual or unusual, and the consistency with general practice in this case. Among the light-fingered gentry, or upon the street, such a statement as this, in view of the facts so far at least uncontradicted, would be called the "double cross." I leave to this committee, to the courts and to the people,

and to history hereafter to determine the kind of a mind it required to have written down such a statement as that.

Throughout this letter of March 4, the Postmaster General complains of delay on the part of the Third Assistant in making his decision. Delay is admitted. There was as much of it as the Third Assistant found possible. The reason for it was that the Third Assistant for upwards of a year had guessed precisely what the Postmaster General proposed to do in the case and that his movements and those of his field force were simply to create conditions which would force the Third Assistant, "the proper officer of the department," to take the action against the publishing company and its magazines, which the officials had determined should be taken. If not by "concerted action" with the fraud order, it was nevertheless to be taken, and for the sake of the record, it was to appear to be by the Third Assistant and "along the usual lines." While there is life, there is hope. The Third Assistant had delayed all he could in the hope that something would happen, something would turn up to obstruct or prevent the consummation of the plans which had been laid to commit this great legal and moral crime in the name of the Government and of law and of righteousness, and which should in the future contribute so great a share to the growing popular distrust of the various branches of the Government, which is so alarming the present Attorney General that he sounds the warning to jurists and lawyers at an annual meeting in New York State.

MR. AUSTIN. Did you report about this matter to President Roosevelt at that time?

MR. MADDEN. I went to President Roosevelt after I went out of the department. I could not do so while in the department.

MR. AUSTIN. I mean while you were in the department.

MR. MADDEN. No, sir.

MR. AUSTIN. He would have stopped it, would he not?

MR. MADDEN. Stopped what?

MR. AUSTIN. This conspiracy.

MR. MADDEN. Mr. Cortelyou at that time had his ear. I think, however, he did not have it later, when President Roosevelt discovered Mr. Cortelyou's tricks about the delegates down South, but I am not so sure about that. It was reported in the press, at least, that the President and Mr. Cortelyou were not on speaking terms after that.

MR. ALEXANDER. You may proceed with your statement.

MR. MADDEN. I would like to state further to Mr. Austin that after I left the department I called on the President to take my leave in a respectful way and asked him to continue his confidence in me until the matter was thoroughly thrashed out, and he assured me that I had his confidence up to that time.

MR. AUSTIN. I believe that what you state about the outrageous conduct of the officials and the conspiracy to destroy and wreck a legitimate business would have been of sufficient importance to President Roosevelt, affecting, as it did, the administration of one of his departments, to have caused him to look into it.

MR. MADDEN. As I told you, Mr. Cortelyou had his ear.

MR. AUSTIN. I do not think anybody ever had his ear to such an extent as to make him indifferent to anything that reflected upon his administration or any branch or bureau of his administration.

Mr. MADDEN. I did not say that, but Mr. Cortelyou was his Cabinet officer, and, in all probability, at least, I presume he was telling the President more or less about this case, because the President was evidently supporting him. What good would it have done me to go and give my views on that, when I could not prove anything of that kind? But I am ready now to prove it, and I think I am doing pretty well along that line. Further on in his letter of March 4, the Postmaster General frankly says, "I could not wait for your finding upon the question of second-class privilege," meaning the right of the magazines to be mailed as second-class mail matter.

Mr. AUSTIN. Now, he went for you for delaying an investigation in this very case that you had been ordered to make?

Mr. MADDEN. Yes, sir; I admit the delay, and I have stated the reason for that delay.

The record already shows that the finding of the Third Assistant on the second-class privilege was not all he "could not wait" for. He "could not wait" to give the company the hearing required by law before he acted, even though his mind were made up as to the action he would take, regardless of what a formal hearing, if given, might show.

The record also shows that he "could not wait" for the evidence which he called for through his chief clerk on March 4, 1907, although it was "upon a careful and thorough investigation of all the evidence," which did not reach his office until March 5; that on March 4 he ruled both publications out of the mails on a false statement in each of his letters—that a hearing, as required by law, had been "granted the publisher" April 30 and May 1, 1906.

In the same letter the Postmaster General complains of the Third Assistant for not being willing to require the company to pay excess postage at the "transient" rate upon mailings "clearly in excess" of the "legally authorized number." The statutes fixing the postage rates have been quoted. The one fixing the cent-a-pound rate for publishers, not only in its language, but as administered from the first, gives an unlimited privilege at that rate both for subscribers' copies and for sample copies. But whether that were true or not, the rate proposed to be assessed upon an alleged excess of the "legally authorized number" at the pound rate is, in the language of the statute itself, for "others than the publisher." And, further, an investigation by the Third Assistant had disclosed that the limitation at the pound rate in the indictments and by the postmaster's ruling, regardless of its legality, was not exceeded—no excess copies were mailed.

It may be important to state here that the congressional commission to investigate the entire subject of second-class mail matter made its report to Congress in Document No. 608 (59th Cong., 2d sess.). The report discussed the law in relation to second-class mail matter very thoroughly. In part it said that publishers have an "unlimited sample privilege." On that congressional commission of six persons there were six lawyers, including the secretary. The latter had large experience in the administration of that very law and in the trial of cases under it in court.

The Postmaster General says in his March 4 letter that the Third Assistant complained that the matter was being handled independently of him, and that such was not the truth, meaning that the case had been given to him July 12, 1905, to be handled "along the usual

lines." In view of the record made, that statement will not require comment.

Toward the end of his letter the Postmaster General deals with the 700,000 and 300,000 errors of the St. Louis postmaster which had been pointed out by the Third Assistant, and says that the postmaster corrected those errors under date of August 31, 1906. A compared copy of a letter from the Third Assistant the next day, March 5, answering this, to the new Postmaster General, then in office, shows this statement to be untrue. It shows that the St. Louis postmaster did, August 31, correct the errors in a small part, but substantially they remained unchanged. A copy of the March 5 letter is submitted herewith, marked "Exhibit No. 39."

EXHIBIT No. 39.

MARCH 5, 1907.

The honorable the POSTMASTER GENERAL.

DEAR SIR: In a letter addressed to me on the 4th instant by the Postmaster General in relation to the Woman's Magazine and the Woman's Farm Journal there appears on page 14 the following statement:

"You refer to an error in the report of the postmaster at St. Louis of April 23, 1906. The records show that he notified you of the correction of said error on August 31, 1906, which was long before you began the preparation of your decision of February 7, 1907, in the matter of excess mailings. You make no mention of said error in that report, and this indicates quite clearly that you had received and used the corrected figures, and that the error had not entered into your consideration of the case."

For your information I have the honor to hand you herewith the letter from the postmaster dated August 31, 1906, to which reference is made, together with the corrected tabulated statement of monthly mailings of the Woman's Magazine from June, 1905, to May, 1906, inclusive, and also the statement which was submitted by the postmaster on June 13, 1906.

That the error to which I referred in my memorandum of March 2 was corrected by the postmaster's table of August 31, 1906, only as to the October, 1905, mailing and not as to the November mailing, is shown by the following statement:

Estimates.	Issue.	Copies.	
		Regular.	Samples.
Postmaster's statement of June 13, 1906.....	Oct. 1905...	652,295	464,055
	Nov. 1905...	1,553,425	96,310
Postmaster's corrected statement of Aug. 31, 1906.....	Oct. 1905...	732,702	556,865
	Nov. 1905...	1,553,425	96,310
Increase.....		770,663	¹ 460,555
Commission's estimate based upon postmaster's record of weights..	Oct. 1905...	852,084	602,181
	Nov. 1905...	986,588	531,676
Increase.....		134,554	¹ 71,505

¹ Decrease.

From the foregoing it will be seen that there is a difference in the estimate of the postmaster and that of the commission in respect of the increase in the number of copies mailed as regulars of the November issue over the number mailed of the October issue amounting to 636,109, and a difference in the two estimates in respect of the decrease in the number of samples mailed of the November issue from the number mailed of the October issue amounting to 389,050. Therefore the fact that I inadvertently used the figures in the April 23, 1906, letter instead of those in the August 31 letter did not materially change the results, for I stated in my memorandum of March 2 that the differences were "over 700,000 copies" and "300,000 copies," respectively.

In my report of February 7, 1907, I did not use the postmaster's figures at all; I used the figures which were compiled by the investigating commission. In my memorandum of March 2 I referred to the error of the postmaster merely for the purpose of showing that he made errors and was not altogether reliable. But whether he made errors or made no errors, I was not taking his conclusions; I was deciding an appeal from his ruling and found the facts.

Very respectfully,

EDWIN C. MADDEN,
Third Assistant Postmaster General.

This great case, sad as it all is, is not without an amusing feature. We come to that now. In this letter of March 4 to the Third Assistant, the Postmaster General says, near the end:

Of course you know that in all the dealings of the Post Office Department with the Lewis Publishing Co. my attitude has been that absolute impartiality should be shown and that the company should be treated with all fairness and in strict accordance with justice and right.

I shall not mar that utterance by comment. My view is that the Postmaster General did not really intend to be facetious and that the subtle humor of the quoted sentence is an inadvertence.

On March 19, 1907, the Post Office Department issued pamphlet for public distribution on the case of the Lewis Publishing Co. and its magazines. It contained an exposition of the publishing company case from the standpoint of the St. Louis postmaster, the post-office inspectors, and the Postmaster General. It was a public statement of the findings, so called, in the long series of investigations which have been recited.

Although the fraud order against the People's United States Bank had been issued nearly two years before, that fact is brought out in this pamphlet, and the reasons for its issuance are stated, and this at the very beginning, as if to prepare the mind of the reader at the outset for the revelations of wrongful conduct to follow.

The Bank case, as the record shows, was never disassociated with the case of the magazines by the Postmaster General and his inspectors. This recitation concerning it in a pamphlet, ostensibly devoted to the magazines, can be accounted for only by the "concerted action" theory under which both cases were undertaken in the first place. Such a statement was out of place in this pamphlet, and served only to intensify the malicious libels with which it was associated.

This pamphlet is essentially an untruth from beginning to end. It contains many misstatements, many misrepresentations as to the law, and many misrepresentations as to the practice. On its face its purpose was to put the Lewis Publishing Co. in a bad light before the public; to hold it up as an outlaw and a fraud.

To a great extent the matters contained in this pamphlet are already brought out and discussed in the record so far made. It will, therefore, be unnecessary, unless the committee desires it, to point out in particular the misstatements of law and fact contained in this pamphlet.

A copy of this pamphlet is now placed in the record, marked "Exhibit No. 40."

STATEMENT BY THE POST OFFICE DEPARTMENT IN THE MATTER OF THE WITHDRAWAL OF SECOND-CLASS MAILING PRIVILEGE FROM THE WOMAN'S MAGAZINE AND THE WOMAN'S FARM JOURNAL ISSUED BY THE LEWIS PUBLISHING CO. OF ST. LOUIS, MO.

The Post Office Department on March 4, 1907, excluded from the second-class mailing privilege the Woman's Magazine and the Woman's Farm Journal, monthly publications of the Lewis Publishing Co., of St. Louis, Mo., upon the grounds (1) that they do not have a legitimate list of subscribers; (2) that they are designed primarily for advertising purposes; and (3) that they are circulated at nominal rates of subscription.

In the beginning it is proper to say that before withdrawing from these publications the privilege of being transmitted in the mails at the second-class postage rate of 1 cent a pound, the publishing company was accorded two hearings before the Third Assistant Postmaster General, on the dates, respectively, of June 17, 1905, and April 30 and May 1, 1906, at each of which it was represented by its president, Mr. E. G. Lewis, and legal counsel; Henry H. Glassie, Esq., being present as advisory counsel to the Third Assistant Postmaster General. The entire investigation of the subscription lists and publication methods of the company, including the two formal hearings before the Third Assistant Postmaster General, and several informal hearings before the postmaster at St. Louis and other officials of the Post Office Department, extended from March, 1905, to March, 1907.

The publications named are of the "mail-order" type, and consist principally of advertising. The advertisements are of two classes, viz, editorial and space. Much of the regular advertising space, and of the editorial pages as well, is used as the medium for promoting various business enterprises and interests controlled in whole or in part by the president of the publishing company. The reading matter consists partly of short and serial stories, but largely of brief notes and miscellaneous clippings, such as are ordinarily contained in advertising circulars transmitted in the mails at the third-class postage rate of 1 cent for each 2 ounces.

By statute it is provided as among the conditions upon which a publication may be admitted to the second class of mail matter that—

"It must be originated and published for the dissemination of information of a public character, or devoted to literature, the sciences, arts, or some special industry, and having a legitimate list of subscribers: *Provided, however,* That nothing herein contained shall be so construed as to admit to the second-class rate regular publications designed primarily for advertising purposes or for free circulation or for circulation at nominal rates." (Act of March 3, 1879.)

In the postal regulation (sec. 437), applying these statutory provisions, it is said that—

"Regular publications, designed primarily for advertising purposes, will include (a) those owned and controlled by one or several individuals or business concerns and conducted as an auxiliary and essentially for the main business or calling of those who own or control them; (b) publications devoted largely to advertising and having a nominal list of bona fide subscribers, but whose circulation is gratuitous."

The president of the Lewis Publishing Co. has promoted or exploited, through the medium of the Woman's Magazine and the Woman's Farm Journal, more than one dozen of his private enterprises, one of which was the "People's United States Bank," against which a fraud order was issued by the Postmaster General on July 6, 1905, for the reason that sales of its stock had been made and deposits induced upon false representations and promises and that the funds of the institution were being misapplied.

Another of the leading statutory conditions upon which a publication may be admitted to the second class is that it have a "legitimate list of subscribers." The postal regulations provide that—

"This list of subscribers must be legitimate in its entirety. And the sending of copies free to the recipients thereof to a number in excess of the number sent to actual subscribers will be taken as evidence that the primary design or chief purpose of the publication is not to meet a real demand on the part of subscribers, but to secure a forced circulation, within the prohibition of the statute against publications 'designed primarily for advertising purposes, or for free circulation, or for circulation at nominal rates.'"

Publishers of periodicals of the second class have the privilege of mailing at the 1-cent-a-pound rate of postage (second-class rate) sample copies not exceeding in number the total of legitimate subscribers, and not oftener than three times a year to the same person, but it is provided that the words "sample copy" shall be marked upon the exposed face of copies sent as samples or upon the wrappers inclosing them or upon the wrapper of the package containing a number of sample copies in bulk.

In March, 1905, the Lewis Publishing Co. represented to the Post Office Department that the Woman's Magazine possessed a paid-in-advance subscription list numbering 1,250,000, and that the paid-in-advance subscription list of the Woman's Farm Journal numbered 500,000. The company advertised at that time, and continues to advertise, a guaranteed circulation of 1,500,000 for the former publication and of 600,000 for the latter. Presumably upon the basis of these circulations, the advertising rates of the two publications are announced to be \$6 and \$4 an agate line, respectively.

"An exhaustive inquiry into the publication methods of the Lewis Publishing Co. was instituted by officers of the Post Office Department in March, 1905, which extended to April, 1906. This was followed in May, 1906, by an inquiry conducted by different officers attached to another bureau of the department, which extended to February, 1907." It was ascertained that at the time of the beginning of the first of these inquiries, and until October, 1905, when a count of the subscription lists of the two magazines was made, it was the practice of the company to mail the publications in wrappers of different colors and sizes, for the purpose of distinguishing between copies going to actual subscribers and those going to persons whose subscriptions had expired, or going as sample copies so marked, and copies irregularly mailed as samples and as going to subscribers, not marked "sample copy." It was disclosed that while over 600,000 copies of the Woman's Farm Journal were being mailed each month, of which less than 300,000 were mailed *as to subscribers*, less than 150,000 copies were, according to the company's own system of distinguishing wrappers, *going to actual subscribers*. Upon the basis of a claimed paid-in-advance subscription list of 500,000, and a guaranteed monthly circulation of 600,000, the advertising rate was announced to be \$4 an agate line. To warrant its claim of a circulation of 600,000, the company must have had an actual subscription list of 300,000, for this publication and the president of the company made oath that it possessed actual subscribers in that number.

At the hearing of June 17, 1905, the president of the company was asked, "How many copies are printed of each issue of the Woman's Farm Journal?" In reply he called attention to the sworn statement appearing regularly in issues of the publication, and stated that for February, 1905, the circulation of the publication was 636,115, and that about two-thirds of that circulation was to subscribers. Mr. Cabot, secretary of the company, added, "It will average that; between 55 and 70 per cent." Mr. Lewis said, however, "It would depend upon the season of the year." Asked by the Third Assistant Postmaster General, "How many expired subscriptions have you on that Farm Journal?" Mr. Lewis explained that the company *carried no expired subscriptions*; that in the case of the Farm Journal the same policy was pursued as in that of the Woman's Magazine; and he later stated positively that this latter publication carried "*Not a single subscriber*" after expiration of the subscription.

On the basis of legitimate subscribers numbering less than 150,000, the company was entitled to mail an equal number of sample copies of the publication, provided they were marked "sample copy." The total authorized mailing each month was therefore less than 300,000. Under no law or regulation was the mailing of the remaining sample copies, exceeding in number 300,000, at the cent-a-pound rate permissible. But it was shown that approximately 150,000 copies of the publication were being mailed monthly *in plain wrappers as to subscribers*, and without being marked "sample copy." This afforded a basis for a still further illegal mailing of 150,000 copies monthly marked as samples; the total number of copies of the publication mailed monthly in excess of the number authorized being thus about 300,000. The names used for these unlawful mailings were obtained from old letters purchased of mail-order business houses and from lists secured from defunct publications and other sources. These names were carded and divided by the company into 10 "lot numbers," each lot containing from 50,000 to 260,000 names. Monthly, names for illegal mailing purposes aggregating the number needed were taken from these lot numbers and so used, the copies going as legitimate subscriptions to such names and as samples.

It was disclosed that while about 1,500,000 copies of the Woman's Magazine were being mailed, and while about 800,000 of these were going as to subscribers, only 540,000, approximately, were, according to the system of distinguishing wrappers, mailed in pursuance of actual subscriptions. As previously stated, this publication was represented to have a paid-in-advance subscription list to the number of 1,250,000 and a guaranteed circulation monthly of 1,500,000, upon the basis of which circulation its published advertising rate was \$6 per agate line. The president of the company made oath that the list of actual subscribers numbered 800,000. Upon the basis of an actual list of subscribers numbering 540,000, the company was entitled to mail the same number of sample copies of the publication, provided they were marked "sample copy," so that the total of its legitimate monthly mailings of this publication were, approximately, 1,080,000 copies. No more than this number of copies could legally be mailed at the second-class rate of 1 cent a pound; but in order to obtain the benefit of that rate upon the remaining 420,000 of its claimed circulation, the company was

mailing monthly 210,000 in plain wrappers, as to regular subscribers, and was mailing a like number of copies marked "sample copy." The names to which these 420,000 excess copies were sent were obtained from purchased letters, defunct publication lists, etc., and were carded and divided into "lot numbers," apparently for the purpose of being so used.

During October, 1905, following these disclosures, a very thorough count of the subscription card files of the Woman's Farm Journal and the Woman's Magazine was made by officers of the Post Office Department, which more than confirmed the facts developed by the previous examination of mailings in the distinguishing wrappers. The cards so counted were the records from which the publications were mailed and were the only records from which the true subscriptions could be intelligently ascertained, it having been the practice of the company previously simply to card subscriptions when received, enter the cash upon its cash records, and destroy the subscription letter if it was in renewal of subscription, or discard it as a record by placing it in a miscellaneous file. Such files of letters were stored away monthly without any system of indexing or recording or supplying the undated letters with dates. It was pleaded by the company in excuse of this lack of business system and necessary records that the subscription price of the publications (10 cents per annum) was so low as to make an accurate and systematic record of subscriptions impracticable. This plea, however, was inconsistent with the claim of the company continually advertised, that its business was the most profitable publishing business in the world. During the progress of the original investigation by the Post Office Department the company changed its system of mailing in such a manner as to prevent the examining officers from ascertaining the actual number of subscribers for each of the publications.

The failure of the company to affix dates to undated subscription letters, to retain and file properly letters in renewal of subscriptions, and to separate original subscription letters from these renewed subscriptions and properly and systematically file and index them, made possible the manipulation and padding of its files in such manner as to conceal the wide discrepancy between the actual number of subscriptions and the number claimed and advertised for each of the publications.

The postmaster at St. Louis made inquiry of postmasters at the post offices of address of 1,000 of these excess copies of the issue of the Woman's Farm Journal for October, 1905, and the replies received showed that 90 per cent of the persons to whom such copies had been mailed had never subscribed for the publication. Five hundred names taken from similar copies were submitted to the publisher, with the request that he exhibit card records showing that they represented persons whose subscriptions had expired, but he was able to supply only 6 such names of the 500 claimed. Later he repeated his claim that these excess copies were mailed to persons whose subscriptions had expired, but on being confronted with the results of the inquiries made by the postmaster and the investigating officers admitted that such copies had been mailed not to persons whose subscriptions had expired, but to persons whose names had been selected by him. He then claimed that payment for these copies was made from a special fund contributed by his sympathizers, but failed to substantiate this statement. These excessive mailings were, in fact, *sample copies illegally mailed*.

It was further disclosed by the official inquiry that a considerable proportion of the subscriptions to each of the publications had been obtained at the club rate of 5 and 6 cents each instead of at the advertised rate of 10 cents per annum; that many subscriptions were being furnished free and others at greatly reduced rates in pursuance of advertising and clubbing arrangements; that the average amount received, according to the statement of cash receipts of the company, upon the copies of each publication mailed was approximately 3½ cents per copy per annum. The annual receipts from subscriptions to the Woman's Magazine for 1905 were about \$50,000, while the postage upon the 1,500,000 copies mailed monthly, at the rate of 1 cent a pound, amounted to more than \$36,000, leaving but \$14,000, or an average net subscription price after payment of postage of less than 1 cent per copy per annum for copies mailed. No consideration is given in this calculation to the large money prizes periodically paid by the company to subscription agents. The annual receipts from subscriptions to the Woman's Farm Journal are, approximately, \$15,000; the total sum received in subscriptions for the two magazines per annum thus being less than \$65,000, while the publisher continues to advertise that "two million people each pay 10 cents per year for our magazines, but when we get it it is \$200,000."

In explanation of the mailing of 600,000 copies monthly of the Woman's Farm Journal, and of 1,500,000 copies monthly of the Woman's Magazine, upon the basis of actual subscription lists of 150,000 and 540,000, respectively, the president of the company stated that the excess copies mailed as to subscribers were going to persons whose subscriptions had expired. But each of the publications was carrying the following notices:

"Discontinuances: Subscribers wishing the Woman's Magazine stopped at the expiration of their subscription need not notify us to that effect. We shall consider it

their wish to have it discontinued, if they do not renew promptly when notified that the time paid for has expired.

"If you find this paragraph marked, it means that your time is out and *that we will stop sending the magazine if not renewed within 30 days.* We don't want to lose you, so please renew at once. If your paper comes in a blue wrapper, it is also a notice to you that your subscription has expired."

It was shown that this published rule was being followed up to and including the month of October, 1905, the time of the original count and investigation, but that for the sake of convenience the current subscription cards were being separated from the expired subscription cards every three months in the case of the Woman's Magazine and every four months in the case of the Woman's Farm Journal, instead of every 30 days, and that thereafter the cards representing expired subscriptions were used only three times a year for sample-copy purposes.

The following questions and answers are quoted from the reported proceedings at the hearing of June 17, 1905:

"Q. How many copies are printed of each issue of the Woman's Magazine?—A. About a million and a half of each issue.

"Q. How many subscribers have you now?—A. In the neighborhood of a million, paid in advance.

"Q. Have you any expired subscriptions?

"(Mr. Lewis appealed to Mr. Cabot, who stated that subscribers are not carried on the list after they have been notified of the expiration of their subscriptions.)

* * * * *

"Mr. GLASSIE. You don't give any credit to the subscriber at all?

"Mr. LEWIS. Not at all. (He then stated that of course there might be mistakes; that there might be delay in sending out the paper in a green wrapper, etc., but that they offer a premium of 1 cent for the detection of each error of that kind.)

"Mr. GLASSIE. I mean your policy is the moment a subscription expires notice is sent—what is your policy?

"Mr. LEWIS said that when a subscription expires the magazine is sent out in a green wrapper, and that is practically the end of it unless that subscriber renews.

"Mr. GLASSIE. You don't carry a subscriber who has expired?

"Mr. LEWIS. Why, no; that person has already received the paper for a year, and if he doesn't renew it is evidence that he doesn't want to.

"Mr. GLASSIE. Your definite statement is that your policy is not to carry a single subscriber after his subscription expired?

"Mr. LEWIS. *Not a single subscriber.*"

Near the head of the business column of the Woman's Magazine was regularly carried the following statement: "Entered at P. O., St. Louis, as second-class matter, December, 1899." As a matter of fact, entry to the mails as matter of the second class had not been granted to the publication, and the statement that it had been so entered was in direct violation of the following postal regulation:

"Printing notice of entry in publication.—The words 'Entered —, 190—, as second-class matter at the post office at —, act of Congress of —, —,' being prima facie evidence of the right of a publication to transmission in the mails at the second-class rates of postage, publishers will, on receipt of the formal certificates of entry, cause such notice to be printed, preferably on the first page, in each copy of their publications issued thereafter. *The insertion of this statement in a publication without authority of the department will be held to be submitting 'false evidence relative to the character of the publication for the purpose of securing admission thereof at the second-class rates for transportation in the mails,' and subject the offender, on conviction, to a fine of not less than \$100, nor more than \$500.* (Act of June 18, 1888, sec. 1593, P. L. and R.) There is no objection, however, to the printing on copies of a publication mailed at the second-class rates of postage under a conditioned permit, pending action of the department on an application for its admission to the second class of mail matter, of the words, 'Application has been made to the department for entry of this publication as second-class matter.'" (Ruling 308, p. 1034, January, 1905, Postal Guide.)

The effect of publishing the announcement that the publication had been entered as matter of the second class was to mislead advertisers, and particularly stockholders of the publishing company, into the understanding that the Woman's Magazine, which was one of the main assets of the company, had been regularly and permanently admitted to the mails as a second-class periodical.

In April, 1906, after having learned by very thorough tests and exhaustive inquiry that almost one-half the mailings of the two publications were illegitimate, the postmaster at St. Louis, acting under instructions from the Post Office Department, began collecting from the Lewis Publishing Co. the *transient* second-class postage rate of 1 cent a copy on the mailings of the two publications in excess of the number which

the company was legally entitled to mail. This additional postage has amounted to about \$7,000 a month.

The company appealed from the action so taken by the postmaster, and was accorded a hearing on April 30 and May 1, 1906, upon the question whether the postmaster should be sustained in his action in collecting excess postage, and also upon the question whether both the publications should be excluded from second-class privileges. Following that hearing the second official inquiry was instituted, and as the result of that inquiry the original finding as to the number of subscribers to each of the publications was substantially confirmed. This inquiry developed that in order to maintain the circulation of the *Woman's Farm Journal* at 600,000, as advertised, and of the *Woman's Magazine* at the advertised circulation of 1,500,000, the company was sending 74 per cent of its mailings of the former publication and 34 per cent of the latter to persons whose subscriptions had expired. In *Conent v. The Postmaster General*, decided by the supreme court of the District of Columbia in October, 1905, it was held that where a *considerable proportion* of the persons listed as subscribers to a publication appeared to be those whose subscriptions had expired, such persons could not reasonably be counted as a part of the legitimate list of subscribers.

The postal laws and regulations treat as subscribers "Those who voluntarily seek and pay for the publication with their own money," and as a general proposition it is said that a subscriber is "one to whom the publication is sent because he puts his money down for it and pays the subscription price." Subscriptions made by individuals for those who bear such relation to the donor that it may be said that the latter pays the subscription for and on behalf of the person who receives the publication, form an exception to this general rule. This exception, however, can not under any construction be so extended as to embrace bulk subscriptions made by the hundreds. The sample-copy privilege is extended to enable the publisher to solicit new subscribers, and not for the purpose of making possible the inflation of the circulation of the publication to the extent of 50 per cent or more, and thus afford a basis for demanding excessive advertising rates. The legitimate press makes use of only a small percentage of its current subscriptions as the basis for the circulation of sample copies. Generally it disseminates information or knowledge relating to public affairs, literature, the arts, the sciences, or to special industries, and owes its origin and continued publication to its carrying out of those designs. It is not used as an auxiliary to other business interests of the publisher, nor are its editorial columns used for the promotion of his financial schemes and ventures. It should be encouraged, but the special rate which it now enjoys can not be maintained unless the department deals promptly and effectively with publications such as the *Woman's Magazine* and the *Woman's Farm Journal*, and which are shown to be grossly abusing the second-class mailing privilege, and so depriving the Government of large amounts of revenue.

The use of these publications so largely in the exploitation of other enterprises of the president of the publishing company; the sending "free to recipients" of twice the number of copies circulated to actual subscribers; the methods used to make the number of copies mailed each month correspond with the circulation guaranteed to advertisers; the general character of the reading matter of each publication, and their circulation at nominal rates of subscription, show plainly that both were "designed primarily for advertising purposes," and were therefore not entitled to transmission in the mails at the second-class postage rate of 1 cent a pound.

It is unnecessary for the purposes of this statement to set forth in further detail the reasons for withdrawing from the *Woman's Magazine* and the *Woman's Farm Journal* the privilege of passing in the mails as matter of the second class, or to refer to all the features of those cases, even if it were possible in this space to do so; and only an outline of the cases and of the basis for the action taken by the Post Office Department upon them is here attempted.

It is impossible to estimate accurately the total losses which have been suffered by the Government during the past four years or more in consequence of the publication methods of the Lewis Publishing Co. The total of postage due upon mailings of the *Woman's Magazine* and the *Woman's Farm Journal* in the period from October, 1905, to February, 1906, in excess of the number of copies legally transmissible at the second-class rate of 1 cent a pound, is ascertained, however, to be approximately \$120,000, of which about two-thirds is yet unpaid; and this will indicate the extent to which the postal revenues have been depleted through the unlawful mailings of the company. The president and secretary of the company are under indictment in the United States court at St. Louis upon the charge of conspiring to defraud the United States of postal revenue, and the former also stands indicted upon the charge of using the mails of the United States in the conduct of a scheme to defraud. This latter indictment has reference to his promotion through the mails of the *People's United States Bank*, which has been referred to herein.

POST OFFICE DEPARTMENT,
Washington, March 19, 1907.

I quote the following from the last paragraph on page 4:

An exhaustive inquiry into the publication methods of the Lewis Publishing Co. was instituted by officers of the Post Office Department in March, 1905, which extended to April, 1906. This was followed in May, 1906, by an inquiry conducted by different officers attached to another bureau of the department, which extended to February, 1907.

What has already gone into the record shows the nature and character of the "inquiry," so called, which this pamphlet states continued from March, 1905, to February, 1907. During that two years there was practically always a number of postal officials at work in the company's offices. Much of the time the force consisted of from 50 to 60 persons, prying into books, papers, and records, and formulating reports to the St. Louis postmaster or to the department. These investigations were not the only ones. There were others not recorded in this pamphlet.

I am not extolling the Lewis Publishing Co. when I say it may fairly be doubted whether there be another business institution in this country which could have survived so continuous a governmental assault, even if the department took no action upon the reports formulated.

But add to this the air of a force of detectives on the scent like bloodhounds, stealing in under cover, seizing papers, sealing up the doors of the company's offices when they left so that none might enter when they were absent, brow-beating and intimidating employees, determined to find wrong, and formulating mysterious, secret reports from what they found or said they found, and then restoring the papers and records to the company in disorder to the obstruction of its business operations while order was being restored.

Mr. AUSTIN. Have you any proof that they were browbeaten?

Mr. MADDEN. Yes, sir; and it will be submitted before I am through.

Attention is drawn to the cost to the Government of such a continuous inquiry. From a 15 years' experience in postal administration, I am able to say that no postal law required it. No postal law authorized it. It was without precedent. The payment of public money for that purpose was without warrant of law.

The use of the mails does not in any way depend upon whether matter be mailed by a person or institution, whose business or "publication methods" are right or wrong, or good or bad. The use of the mails is a question of the tangible thing offered for transportation. Is it lawful to be mailed? In what class does it belong, and the payment of the postage rate for matter of its class. That is all.

To secure second-class rating for a magazine, the publisher must prove compliance with the law for that class. Everything to be considered is to be found in the magazine itself, except the required list of subscribers. The publisher must submit satisfactory proof of that. It may be submitted at the post office or at the department, or at the publication office, wherever it may be mutually agreeable to the publisher and Postmaster General. If the list of subscribers be not legitimate, the magazine is not of the second class.

Mr. AUSTIN. Do you know I was insisting awhile ago that there was a legitimate list of subscribers to be considered in this matter?

Mr. MADDEN. Yes, sir.

Mr. AUSTIN. And I had a controversy with you on that point.

Mr. MADDEN. I will make this perfectly clear to you. We do not want to get into a dispute about that now.

Mr. AUSTIN. All right.

Mr. MADDEN. If it be legitimate, and the magazine otherwise complies with the law in being a periodical issued from a known office of publication at stated intervals, not greater than quarterly, is numbered consecutively, is formed of printed paper sheets without cloth, leather, or other substantial binding, is originated and published for the dissemination of information of a public character, is not designed primarily for advertising purposes or for free circulation or for circulation at nominal rates, the magazine is of the second class. Upon these matters, and they are all, except the list of subscribers, found in the publication itself, the class depends.

Mr. AUSTIN. That was one of the complaints against the publication, and one upon which the Postmaster General ruled it out, that is, it was designed for advertising purposes?

Mr. MADDEN. Yes, sir.

Mr. AUSTIN. And on yesterday I called your attention to the fact that there were 18 different schemes which Lewis was promoting which were advertised in this paper.

Mr. MADDEN. But the advertisement of a good many of these was before.

Mr. AUSTIN. But they were advertised in this paper.

Mr. MADDEN. Would that justify the action, when he said to the Department, "Wherein do I violate your rules?" All the publishers do that.

~~Mr. AUSTIN. But the Postmaster General thought he was over-~~
doing it.

Mr. MADDEN. How could the Postmaster General honestly determine that, when he had nothing to bear it out?

Mr. ALEXANDER. I want to call Mr. Austin's attention to the fact that while there were apparently quite a number of schemes on hand, they were not on hand at the same time.

Mr. AUSTIN. But it seems to have been a continuous performance.

Mr. MADDEN. If they were doing wrong, they should have been punished in the proper way. I do not stand for anything that may have been wrong.

Mr. AUSTIN. But it was a good reason why the publication should be excluded.

Mr. MADDEN. No, sir; that company was owned by 18,000 people, and Lewis was only one of them. Why destroy their business in order to punish him?

Mr. AUSTIN. But we must deal with the publisher in passing upon these matters in the department.

Mr. MADDEN. I did not consider Lewis any more than any other stockholder.

Business methods or publication methods have nothing whatever to do with the right to send any class of matter in the mails. It makes no difference whether a dividend was wrongfully paid to stockholders or whether all of the items of expense were shown by the company's books or whether the bookkeeping methods were proper, as argued in the inspector's report upon the "exhaustive inquiry" mentioned in the pamphlet. These were strictly private affairs. Such an inquiry *was in violation* of the constitutional protection of the people against *unreasonable searches*, was gratuitous, extra-official, unauthorized,

and unnecessary. Further, the company was given no opportunity to make answer or to defend its business or publication methods if they were to be considered as having weight in determining the postage rate on its outgoing magazines. Such an inquiry must presume investigators and persons in the department competent to pass upon the efficiency and propriety of those methods, a matter not contemplated by law.

The following is taken from the last paragraph, last page of the pamphlet:

The president and secretary of the company are under indictment in the United States court at St. Louis upon the charge of conspiring to defraud the United States of postal revenue, and the former also stands indicted upon the charge of using the mails of the United States in the conduct of a scheme to defraud.

The statement that such indictments had been returned is literally true. Only one of them was brought to trial. When the evidence was all in, it was not permitted to go to the jury. The case was thrown out of court. The record already shows what happened to the other indictments mentioned. All were dismissed without being brought to trial.

This pamphlet, ostensibly devoted to the magazines, was distributed under the penalty envelopes of the department and given out from there to the representatives of the press. Having on its face the seal of the Government, the damaging effect was tremendous. An unrestrained holocaust could not be more destructive.

Under the act of January 12, 1895, and that of March 3, 1905, the issuance of such a pamphlet is specifically forbidden unless authorized by law. A search of the statutes will disclose no authorization for such a publication. It was paid for with public money in spite of the statute forbidding it. In effect, the very 18,000 persons, against whose business this pamphlet was directed, were taxed in spite of the express will of their Representatives in Congress to pay the expense of it.

If such a document were proper to be issued at all, and the matter had been handled along the usual lines, it would have been prepared in the Classification Division of the Third Assistant's bureau. Be it noted, that the matter which appears in this pamphlet was prepared in the office of the Assistant Attorney General for the Post Office Department, and the pamphlet was distributed to the public from that office.

Drawing attention now to the case as a whole, and especially to the fact, as this pamphlet issued March 19, 1907, shows, that the magazines of the Lewis Publishing Co. were ruled out of the mails March 4, which closed down the printing and publishing plant, I now submit an actual printed copy of a circular letter sent out by Inspector Fulton from St. Louis April 20, 1907, six weeks after the closing down of the plant. This letter is accompanied by the penalty envelope in which it was sent out, and the penalty envelope inclosed for reply. The whole is submitted in one already printed on page —.

Owing to the extraordinary character of this letter, I read it in its entirety:

570.

(Return all papers promptly with reply.)

CASE No. 39640-C.

POST OFFICE DEPARTMENT,
OFFICE OF INSPECTOR, ST. LOUIS DIVISION,
St. Louis, Mo., April 20, 1907.

With the return of this letter, please inform me whether your business transactions with the People's United States Bank, the Lewis Publishing Co., E. G. Lewis, president; F. V. Putnam, treasurer; and H. L. Kramer, trustee, have been satisfactory, and advise me fully as to the particulars thereof, and forward all your correspondence received from them except the certificate of stock, which it is desired that you retain. You should also send the envelopes in which the correspondence was received, having first written your name on each for identification.

It is thought proper to make the above requests because of inquiries received at this office as to the business of the firm named, and this letter should not be regarded as in any way reflecting on their character or reliability, and should be treated as strictly confidential.

Your early reply under cover of inclosed envelope, which does not require that a postage stamp be affixed, will be duly appreciated.

Very respectfully,

R. M. FULTON,
Inspector in Charge.

Mr. MCCOY. I would like to ask you a question there.

Mr. MADDEN. Yes, sir.

Mr. MCCOY. That states that the circular, or whatever it was, was sent out on account of inquiries received at the Post Office Department?

Mr. MADDEN. Yes, sir.

Mr. MCCOY. Were any such inquiries received by the Post Office Department?

Mr. MADDEN. I do not know; I never knew of any such inquiries.

Mr. AUSTIN. That would go to the inspector's division?

Mr. MADDEN. If the department has any such inquiries I presume they will present them.

Mr. MCCOY. Were these inquiries in regard to the bank or the publications?

Mr. MADDEN. I do not know.

Mr. MCCOY. Any inquiries in regard to the publications would have come to you, would they not?

Mr. MADDEN. They ought to have come to me.

Mr. MCCOY. And you never received any such inquiries?

Mr. MADDEN. No, sir; I never received any complaint against the publication.

Mr. BRITT. What is the date of that?

Mr. MADDEN. April 20, 1907.

Mr. BRITT. Were you in office at that time?

Mr. MADDEN. No, sir.

Mr. MCCOY. When did you go out of office?

Mr. MADDEN. March 22, 1907.

Mr. MCCOY. What is the date of that Fulton circular?

Mr. MADDEN. April 20, 1907.

Mr. MCCOY. And prior to the time you went out of office, you never had any such inquiries coming from persons interested in finding out?

Mr. MADDEN. No, sir; and I will state in addition that I do not believe there were any. I think that is a part of the fiction in the case.

Mr. AUSTIN. The representations made by Mr. Lewis in order to place that bank stock turned out to be fraudulent.

Mr. MADDEN. The courts have not held so; only the Post Office Department has held that.

Mr. AUSTIN. Did not Lewis state that he was going to take a million dollars of stock in that bank?

Mr. MADDEN. I am not trying the bank case here.

Mr. AUSTIN. But you brought it up.

Mr. MADDEN. Only to show the conspiracy.

Mr. AUSTIN. You spoke of that bank the first thing in your statement.

Mr. MADDEN. But only for the purpose of showing the conspiracy involving these two institutions, the bank and this publishing company, by concerted action. They were both to be destroyed.

Mr. AUSTIN. But they were using the mail for the purpose of sending this paper containing the prospectus of the organization of this bank.

Mr. MADDEN. I believe so.

Mr. AUSTIN. And one of the promises was that he would take a million dollars of the stock himself?

Mr. MADDEN. I believe that is true.

Mr. AUSTIN. And another was that he would not borrow a dollar of the money of the depositors?

Mr. MADDEN. I believe so.

Mr. AUSTIN. And that he would have 15 of the leading bankers of St. Louis to pass on all loans, and all three of these propositions turned out to be untrue?

Mr. MADDEN. Well, I have this to say: I do not answer that, as I am not answering for the bank.

Mr. AUSTIN. Why not?

Mr. MADDEN. I can say this in answer: About two weeks before the fraud order was issued the State authorities gave the bank a clean bill of health. I say they tried Mr. Lewis for that conduct on a charge of fraud, and they were kicked out of court. I say, further, that the State was satisfied with the board of directors and the conduct of the bank on June 12, and the fraud order was issued on July 12. I do not discuss that matter now. If Mr. Lewis did what he should not have done, I do not excuse it. He was on the witness stand on the hearing, and the State bank examiner asked the question whether any money in that bank was loaned or used improperly and whether the State law had been violated, and he said, "No, sir," in answer to it.

Mr. AUSTIN. You have made a general statement in explanation, but you have not answered my question.

Mr. MADDEN. That is the only answer I can give, because I do not represent the bank.

Mr. AUSTIN. But you know whether or not these three promises were kept?

Mr. MADDEN. I was not answering that.

Mr. AUSTIN. And while the banking department of the State of Missouri might have been satisfied, that does not necessarily mean

that these three pledges and promises were kept. The mails were used in order to put these three propositions before the people and induce them to invest money in this bank. Mr. Lewis did not put in a million dollars; he did borrow money from this bank for these companies, and he did not have 15 of the leading bankers of St. Louis acting on his board of directors to pass upon the loans of this bank, nor did he put the money of that bank in Government bonds.

Mr. MADDEN. My answer to that is this: That those who deposited money in the bank were paid back one hundred cents on the dollar, and those who had stock received 87 per cent in dividends. That bank was destroyed by the fraud order. The State was satisfied. But let Mr. Lewis explain that himself on the stand; I claim it is not a part of this inquiry.

Mr. AUSTIN. But you have brought that in here. The corner stone of Mr. Madden's statement or arraignment of the Post Office Department was this bank, and he stated that Postmaster General Cortelyou and Senator Platt, of the United States Express Co., were after Lewis and this bank.

Mr. MADDEN. I stated the facts as I knew them, and I mentioned that as a possible motive.

Mr. MCCOY. In order to demonstrate that Mr. Lewis had any fraudulent intention in the matter it would be necessary to show that he made these promises intending not to keep them. Circumstances may have so altered after the promises were made that, without any injury to the depositors in the bank, he might have changed his plans entirely.

Mr. AUSTIN. But he had no right to change a contract which he virtually made without consulting the depositors. If I tell you I am going to organize a bank, and as an inducement to you to invest \$100,000 in the stock I promise to invest a million dollars in it and promise that I will not use any of this money to promote the companies I am identified with, I have no right to violate that pledge or promise to you without first consulting you.

Mr. ALEXANDER. That is a matter not before this committee, but the whole scheme may have been changed by the consent of the stockholders. I do not think, however, that we should go into the merits of that case at this time.

Mr. MCCOY. But I can not see that there was necessarily a fraudulent intent to be inferred from these promises from the fact that these things were done afterwards.

Mr. AUSTIN. The agent or attorney for Lewis was charging the Postmaster General with the destruction of this bank, as well as the destruction of the publication, and I thought it well enough to call attention to how this bank was organized and how the columns of this paper and the mails were used in order to put these presentations before the public to induce them to invest in the bank. In doing this, Lewis attracted the attention of Mr. Cortelyou and other officials of the department to the fact that Lewis had organized this bank under these conditions, and had used the medium of the mails in order to succeed with it.

Mr. TOWNER. I think these matters will be more properly subject to discussion and consideration when we have the facts. There are *a great many things* that Mr. Madden is stating that would be properly *subject to discussion*, but this is a statement which it occurs to me

we can not intelligently discuss until the evidence is before the committee. It seems to me that the proper way to do it would be to wait until Mr. Madden finishes his statement.

Mr. AUSTIN. I do not want to discuss it at this time.

Mr. TOWNER. I do not want to criticize you for your statements, but I am trying to justify myself from withholding any comment at this time upon this and a great many other matters.

Mr. AUSTIN. I would not have interrupted Mr. Madden with a single question if I had not had a distinct understanding in the beginning that I had his permission to do it.

Mr. MADDEN. I am not objecting to it at all. I was simply making this statement. You say I have arraigned the post-office officials in connection with this bank. I do not believe the record will show that. I have simply stated the facts in reference to the bank as I knew them, and I have arraigned them for what they did to the Lewis Publishing Co. I will say this in reference to fraudulent intent in the fraud order case against the bank, the court held that the evidence of good faith was overwhelming.

Mr. AUSTIN. I want to call your attention to this fact, that when you were discussing the question of conspiracy, involving Senator Platt, who is dead, and Postmaster General Cortelyou, I asked you the direct question if these gentlemen were interested in publications or in the printing business, and you stated that Mr. Platt was interested in the express business and that Mr. Lewis's bank interfered with his express business.

Mr. ALEXANDER. That was to frame a motive.

Mr. MADDEN. Yes, sir.

Now, I had read a letter signed by Inspector Fulton, dated April 20, 1907.

The letter embodies the idea of "concerted action" on the bank and publishing company cases, according to the simultaneous recommendations of the inspectors on both May 17, 1905, and on which the Postmaster General issued the fraud order against the bank, July 6, 1905, but the Third Assistant, on July 8, 1905, found no cause for action against the magazines. Four days later, July 12, 1905, the Postmaster General sent the publishing company case to the Third Assistant to be handled "along the usual lines." The subsequent transactions to accomplish the final wrecking of the publishing company "along the usual lines" by the hand of the "proper officer of the department," the failure, and the final substitution of the action of the Postmaster General himself to that end, are in the record.

Now comes this letter to cap the climax. After the company's records have been turned topsy-turvy and orderly business for some period rendered impossible; after the company's letter mail has been held up and interfered with, if not all, in great part; after hundreds of thousands of copies of its outgoing magazines have been secretly seized and confiscated; after indictments of the company's officers for frauds upon the public and upon the Government, well advertised in the press and Government documents; after practically two years' continuous possession of the company's offices for alleged "investigations," well advertised in the press and public documents; after the company's patrons throughout the entire country have been stirred up, irritated to exasperation, by repeated quizzing of

postmasters and their letter carriers as to their private business transactions with the company; after the magazines have been closed out of the mails altogether, and the company forced to default upon the admitted 800,000 subscription contracts, upon advertising contracts, and upon every obligation; after the company's every income is cut off, and its credit destroyed—now, the cause for suspicion and dissatisfaction having been so artfully created in every patron throughout the entire country—now, after all this, this circular letter goes forth and naively asks those patrons whether their business transactions with the company and its officers "have been satisfactory," and complaints are solicited, a Government penalty envelope being furnished for free transmission thereof in the mails to this post-office inspector in St. Louis.

Gentlemen of the committee, words fail at this point. It would require the skill and power of some great master—a Zola, a Hugo, or a Lincoln—to properly depict the consummate rascality and destructive force of this combination of conspired circumstances.

Let us not forget that this Fulton letter calls upon the people addressed to treat the matter as "strictly confidential." They are told it is not the intention to reflect upon the character or reliability of the firm, but that the inquiry is sent them because of other inquiries having been "received at this office." Evidently those "received at this office" did not express enough dissatisfaction for the purposes in hand.

Is it any wonder, seeing his great business so insidiously undermined, wasted, and wrecked; seeing the labor of years and millions of capital going for naught, never knowing where the despoiler's secret hand would next appear, that the president of the company, driven to desperation, in an unguarded moment, declared he thought the only way to get justice from the administration was at the muzzle of a shotgun.

MR. AUSTIN. Does your company propose to have a claim against the Government?

MR. MADDEN. Yes, sir.

MR. AUSTIN. What is the amount of it?

MR. MADDEN. I should say that it would figure up to about \$2,500,000.

MR. AUSTIN. Are you going to ask Congress to appropriate that amount of money to reimburse the company?

MR. MADDEN. Yes, sir; and I think Congress will do it. We are going to keep at it until the conscience of the country is aroused to this great wrong, and until these laws are reformed so as to protect other citizens from a repetition of these outrages. We are going to get it if the Congress of the United States is just, and I believe it is.

MR. AUSTIN. Would you be willing to go to the Court of Claims with it?

MR. MADDEN. That is precisely where we wish to go.

MR. AUSTIN. That is where it ought to go.

MR. MADDEN. Yes, sir; that is what I think, because I do not think that a committee of Congress is constituted to decide a great many of these questions. I think the case should go to the Court of Claims for a finding of the facts and a report to Congress, under the terms of the Bowman Act.

Mr. ALEXANDER. The bill for that purpose would go to the Committee on Claims.

Mr. MADDEN. That committee had it in the last session.

Mr. ALEXANDER. That is the committee to which it would be referred.

Mr. MADDEN. Mr. Bartholdt advised me by letter that he had introduced the bill over again. He drew a different one, but not at my suggestion, because I have nothing to do with that bill.

Mr. AUSTIN. Do you know how much it carries?

Mr. MADDEN. No, sir; I do not. He did not send me a copy of it.

But, resuming my statement, what purpose would complaints of dissatisfaction serve now? The bank had been closed up for nearly two years. The publishing company, after a two years' fight against the industrious malice of the officials, backed by all the force and power of the Government, had at last gone down. Its presses had stopped; its hundreds of employees had been sent home. If "concerted action" on the two institutions had at first failed, there was at last "action" on the publishing company. What more could now be needed?

Well, while all this was going on, many people were taking notice of the strange doings. What was the Government up to? No one could well understand. The closing of the two magazines out of the mails March 4, 1907, made some publishers sit up and take notice. Nothing like it had ever occurred before.

In July, 1907, Mr. A. D. Albert, then editor of the Washington Times, set out for St. Louis to make an investigation on his own account. Before leaving he went to the ex-Postmaster General, then Secretary of the Treasury, for information. Albert returned from his investigation in August. After another interview with the ex-Postmaster General, he rendered a "confidential" report upon what he had found. It was addressed to the then Third Assistant Postmaster General.

I will present the copy in full, and will ask Mr. Cohen to read it for me to save my voice.

Mr. AUSTIN. Where is this newspaper editor now?

Mr. MADDEN. He is publishing a paper in Columbus, Ohio, I believe.

Mr. AUSTIN. Is it a daily or weekly paper?

Mr. MADDEN. I do not know.

Mr. TOWNER. Can we pass that at this time?

Mr. MADDEN. I think it is a very important part of my statement.

Mr. ALEXANDER. You know this record will be read by the members of the committee. We are not getting a very clear comprehension of this case as we go along.

Mr. AUSTIN. How many pages of this are there?

Mr. MADDEN. There are 21 typewritten pages, and it is a very interesting document.

Mr. AUSTIN. I for one would be glad to hear it.

Mr. ALEXANDER. That is not a question of evidence.

Mr. TOWNER. I do not like to take up so much time with it.

Mr. ALEXANDER. All this matter will be printed, and I expect to read this record before forming any opinion about it, hence I do not think it is serving any useful purpose to read these exhibits at this time.

Mr. AUSTIN. Who suggested to this gentleman that he go out and make this investigation?

Mr. MADDEN. That appears in this report; that is all I know about it. He says in the first lines of the report:

On information obtained from a Chicago business man, A. C. Best, of the Fuller Advertising Agency, I went to Mr. Cortelyou early in July and told him the following.

Mr. ALEXANDER. Who is it that is writing that letter?

Mr. MADDEN. Mr. A. D. Albert, editor of the Washington Times.

Mr. ALEXANDER. To whom is this report rendered?

Mr. MADDEN. To the then Third Assistant Postmaster General. It is important in this connection, because a few moments later I expect to show that after this report was made the department readmitted these magazines to the mails with precisely the same advertising in them and at the same subscription price.

Mr. MCCOY. Is there any statement of fact there that you wish to rely upon in making your consecutive statement, or will not the mere statement that on the strength of this report the readmission was granted be enough to carry your argument along?

Mr. MADDEN. No, sir; there is a great deal in there that has a direct bearing on my statement and that sustains my contention. Therefore, I think it important that it should go into the record.

Mr. MCCOY. It will go into the record.

Mr. MADDEN. Then I will not read it now.

Mr. AUSTIN. Who paid his expenses? Why should a man in Washington take sufficient interest in this case to go out there and make the investigation?

Mr. MADDEN. You would have to ask Mr. Albert about that. He says there that he did it in the interest of Mr. Cortelyou because of the criticism, and it is said that political reasons prompted him also, because he said that this thing would become political.

Mr. AUSTIN. Did Mr. Cortelyou say that?

Mr. MADDEN. I can not remember all that is in this report.

Mr. AUSTIN. I thought that Mr. McCoy would stand by me in having it read.

Mr. MADDEN. I think it is the most interesting document in the whole case.

Mr. AUSTIN. You see I am with you on that.

Mr. MADDEN. I understand that you are with me on this proposition.

(The report of Mr. Albert, marked as "Exhibit 41," was submitted by Mr. Madden for the record, and is as follows:)

EXHIBIT No. 41.

MEMORANDUM CONFIDENTIAL TO MR. LAWSE.

On information obtained from a Chicago business man—A. C. Best, of the Fuller Advertising Agency—I went to Mr. Cortelyou early in July and told him the following:

"That I had learned on the authority named that the sentiment of business men in the Middle West was decidedly adverse to the administration and to him personally because of the Lewis case; that Lewis was believed to be innocent of any intentional wrongdoing; that the postal officials high and low were regarded as persecutors; that grave charges were made against certain inspectors and Mr. Goodwin; and that I was about to spend a fortnight within reach of St. Louis and Chicago and desired information on the case to lay before such business men as I might meet."

Replying, Mr. Cortelyou sketched the Government's course in the Lewis case, urged me to examine the record in Mr. Goodwin's office, and so be fully acquainted

with the charges and proof before I went West. We parted with the understanding I should investigate the case, both in Washington and in the West, in my own way and, according as I found it, correct any misapprehension concerning it I might meet.

A second meeting with Mr. Cortelyou occurred August 14, whereat I reported to him substantially as follows:

(1) That I had come back from a careful study of the situation satisfied the Government could not convict Lewis upon any of its charges, as set forth in indictments. -

(2) That the case depended upon two men, Inspector Fulton and Postmaster Wyman; and that the former was indiscreet, overzealous, mistaken or worse, and the latter a fathead.

(3) That two men officially connected with the Government's proceedings against Lewis had reported that it could not convict him.

(4) That between them Fulton and Wyman had committed the Post Office Department and Mr. Cortelyou beyond all reason.

(5) That the proceedings against Lewis appeared to me to be chiefly a series of mistakes, and that the same view, with knowledge of the mistakes, was held in the offices of the following newspapers: The New York Times, the New York Sun, the St. Louis Globe-Democrat, the St. Louis Republic, the St. Louis Star-Chronicle, the Chicago Record-Herald, the Chicago Tribune, the Indianapolis News, the Washington Times.

Item No. 1 depends upon those that follow it.

As to item No. 2, I said:

That between the time of Fulton's last visit to Washington (July 20) and the day of my report to Mr. Cortelyou some one had let it out to newspaper men and others in St. Louis that while in Washington the two had conferred with Mr. Goodwin, Mr. Meyer, and Mr. Cortelyou; that they "were told they must finish this matter up as soon as the cases can be brought into court and that they must put Lewis out of business or they will have to make room for some one else;" that "Cortelyou told them this fight must be gotten out of the way before spring, as the mess is a dirty one and one that will not do the Republican Party any good;" that "Mr. Meyer went over the Lewis case and will assist him (Fulton) in finishing Lewis;" that they were told "they must put Lewis out of business or they will have to make room for someone else;" and that Mr. Cortelyou had given his photograph to each or one of them and promised them his support for preferment in office "if they put Lewis out of business."

Fulton is reported to have said many times that he was the brains of this case; that he wrote all the statements of it as given out by the department; that the memorandum on the withdrawal of the second-class privilege from the two magazines was written by him and cut down one-half in the office; and that it was "either Lewis or himself." These statements have even become the talk in the clubs. That it is a fair statement of Fulton's attitude is credited everywhere. Business men of unquestionable standing regard him with strong suspicion, call him "at the best, a zealot," and cite his proclaimed antagonism to all forms of insurance, on the ground that they are all frauds, as proof enough to them that his judgment is not to be trusted in any important matter.

Every man who spoke of Wyman at all did so with indulgence and condescension. Nearly all of them laughed and told me of an indignity put upon him the morning he was to dedicate a flag pole before his home, when a chamber-pot was swung from the top of it. If he could "hold down" the job of postmaster they were willing enough he should have it, "poor darn fool," etc. It was told he was the only prime mover in the Simmons Hardware Co. who did not have brains enough to take part in the management, and that he was let out on that account. Finally, more than one man told me Wyman had said he "never wrote an original letter in this Lewis case," that "Fulton wrote them and he just signed them." It was common report his bondsmen were making his life miserable.

As to item No. 3, I said:

That a subordinate in the Post Office Department, whom I have known long and well, who has been connected with this case officially, and whose confidence I ought to protect, though I gave his name to Mr. Cortelyou, told me before I went West:

"We don't expect to get any convictions on the postal indictments. But we will get him on the bank cases, sure."

One of the men who impressed me most favorably in St. Louis told me that former District Attorney Dyer had said he had not been able to take a single indictment against Lewis into court because Fulton had failed to supply him with any sufficient showing of fact to sustain them, and that that explained why some of the indictments had gone over for two years, in spite of earnest efforts on the part of Lewis's attorneys to get a trial. This information came from H. E. Lesan, president of the Lesan Advertising Agency and in no wise allied with Lewis, not even by friendship. He had been rather associated with the Government side of the case, he said, until he was

hired to investigate the Lewis Publishing Co. for business men who desired to know if it was financially sound. He did so investigate and came to the firm conviction that Lewis had been very badly used by Fulton and the other inspectors.

In this connection Wyman is quoted as saying:

"I have not been sleeping well for several nights. I have been worrying over that damned Lewis matter. They raised hell with Fulton and me at Washington over this dirty mess, and I am really worried about those damage suits. * * * All they did on this last trip of ours was to give us the dickens for not having put the fellow out of business a long time ago. Fulton, however, assures me that we have no cause to worry, as we will surely put him out of the way this fall forever, but I do not feel just as positive about this as I did, and not nearly so positive as Fulton does. If I do not convict him I will not be reappointed postmaster, and I do not know what I could or would do. I now have things in fine shape in the office, as Mr. Meyer has granted me all the increases of wages which I asked for my men and has also granted me several promotions which I had made pending his confirmation.

As to item No. 4, I said:

"Practically all the business men with whom I talked thought the Post Office Department should have waited either upon action from the department of state of Missouri or the Treasury of the United States, or until it could move jointly with one or both of them. While it was appreciated that the post-office officials had their separate responsibilities, it was yet the feeling that the department had set out to make an issue with Lewis whether his bank suited the State and national banking officers or not. The fact that the first application for a receivership and the first appointment of a receiver were subsequently set aside is regarded as most significant, and it is the general belief that the report of the receiver fully exonerates Lewis by these words:

"Every loan and investment held by the People's United States Bank has been liquidated 100 cents on the dollar with interest to date. The deposits are being paid in full and I have already declared dividends to the stockholders of 85 per cent."

If the means by which Lewis accomplished this settlement through the receiver are regarded as questionable by the Post Office Department, they are not so regarded by Dr. Pinckney French, president of the Missouri-Lincoln Trust Co. and the Olive Street Bank, or by Mr. Lesan, or by Mr. John A. Lewis (not related to Mr. Lewis), cashier of the National Bank of Commerce.

These men and all other bankers whom I saw believe in Lewis, are willing to give him credit personally (one of them told me of directors of his bank who would deposit securities to sustain a loan to Lewis on his demand), and say that his bank, while it was an innovation, was not in any sense criminal and that they are ready so to testify. Dr. French and others told me that Fulton had warned them not to receive Lewis's accounts, either business or personal, or fraud orders would be issued against them. Dr. French then related in detail how he and his cashier had been summoned at Fulton's behest before the grand jury and held there with the books of the bank three days, being finally dismissed without being called into the jury room. "After that," said Dr. French to me, "I could not, in justice to our depositors, give Lewis openly the ordinary banking courtesies. I believed the Government's course to be outrageous, but I had to think of my depositors first."

Of the banking cases I talked only with bankers. But of the withdrawal of the second-class mailing privilege I talked with business men generally, trying to see an equal number of my own choosing and of Lewis's. Those selected by me, whose views are important, were Nathan Frank, Republican national committeeman from Missouri, part owner of the Star-Chronicle and former Representative; Mr. Lesan, one of the most incisive young business men I have ever met; and Walter B. Stevens, long one of the most highly respected of Washington correspondents. They, like every other of the 110 men who knew enough about this case to talk of it to me, characterized the Government's course against Lewis, particularly in withdrawing this privilege, as "outrageous." Most of them regarded it as evidence of a purpose on the part of the department officials, whether Fulton or his superiors, to ruin Lewis before he was brought to trial. They all accept the view of the editors of the Globe-Democrat and the Republic that those two newspapers are as subject to exclusion for being published at a nominal rate as either of Lewis's magazines. Everybody's, the Delineator, and other magazines are cited as having sold bonds, stock, and merchandise through their editorial departments and so, though unharmed by the department, as subject to criticism for "being published primarily for advertising purposes" as the Woman's Magazine and the Woman's Farm Journal.

As to the claim made in the memorandum issued by the department to the press that Lewis did not have a bona fide subscription list the feeling is specially strong. The contention made in the memorandum of March 19, 1907 (p. 6), is that the sub-

scription cards "were the only records from which the true subscriptions could be ascertained, it having been the practice of the company" to discard the subscription letter "by placing it in a miscellaneous file." On this claim and various tests made of selected names depends the Government's case that Lewis had no legitimate subscription list. It seems to me the Government will be overwhelmed when, in answer, Lewis produces the expert accountants' showing as to subscription receipts, the certificate of a count actually made by men of the highest standing in St. Louis, the certificate of the Association of American Advertisers dated March 10, 1906, and the certified totals of a count actually made by the Post Office Department itself through Mr. Fettus. If it be said that none of these counts give Lewis the subscription list he claimed, it is yet true that they completely discredit the Fulton claim that the subscription letters could not be counted and the showing of his special tests. As a publisher, I was specially impressed by the American Advertisers' report. That is accepted as sufficient to warrant advertising agencies to place thereon millions of dollars worth of advertising; and in this case it gave the *Farm Journal* net-paid subscriptions of 386,695 and the *Woman's Magazine* net-paid subscriptions of 1,090,652. As to the special tests, Lewis has answers which satisfied me—inclined as I was to side with the Government—and, with or without his answers, I can not believe they will have much weight when it is considered that they were made by the author of the remarkable letter sent by Fulton to stockholders of the Lewis bank under date of April 20, 1907, reading:

"With the return of this letter, please inform me whether your business transactions with the People's United States Bank, the Lewis Publishing Co., etc., have been satisfactory, and advise me fully as to the particulars thereof, and forward all your correspondence received from them, except the certificate of stock, which it is desired that you retain."

In my judgment, such a letter sent to the patrons of any business house in the country would produce some shadow of a case against that house, as I believe it has done here.

As to item No. 5, I said:

My study of the case brought to light, in printed pamphlets issued in the name of the Postmaster General, instances of absolute misstatement. Thus, at the foot of page 4, of the "Memorandum of the Postmaster General, as embodied in a statement given to the press July 9, 1905," as to the fraud order against the Lewis bank, it is said:

"* * * the Postmaster General found that the directors chosen for the first year consisted of the five following persons: E. G. Lewis, Frank J. Cabot, editor of two magazines practically owned by Mr. Lewis; Augustine P. Coakley, E. W. Thompson, and G. W. Arbogast, employees of the Lewis Publishing Co., which is under the control and management of Lewis. * * * That they did not guard the interests of the people, etc."

Yet under date of June 12, 1905, Fulton received from the secretary of state of Missouri a letter saying:

"In reply to your letter of request of the 9th instant, I have the honor to inform you that this day the reorganization of the board of directors of the People's United States Bank was completed by the election of ex-Gov. Lon. V. Stephens and W. F. Carter as members of said board, vice A. P. Coakley and F. J. Cabot, resigned, which is approved by me; that since the reorganization of the board was begun, four new members have been elected, all well-known business men of St. Louis and all approved by my department; that the names of the directors now are E. G. Lewis, James F. Coyle, Theodore F. Meyer, Lon V. Stephens, and W. F. Carter. * * *

"I write you this letter and send you this exhibit that you may bring them before your department, but ask that they be not published."

Again, at the foot of page 1 of the "Statement of the Post Office Department in the matter of the withdrawal of second-class mailing privilege from the *Woman's Magazine* and the *Woman's Farm Journal*," etc., it is said:

"The reading matter consists partly of short and serial stories, but largely of brief notes and miscellaneous clippings, such as are ordinarily contained in advertising circulars," etc.

As a newspaper man acquainted with practically every use of clipped miscellany I am satisfied that more than 90 per cent of the text of these two magazines was "original copy."

Again, the claim that the original orders of subscription could not be counted.

Again, the statement at the foot of page 9 of the same pamphlet:

"The use of these publications * * * in * * * sending 'free to recipients' of twice the number of copies circulated to actual subscribers * * *."

This without the slightest reference to several counts of the original orders of subscription, the certificate of the public accountants, and the certificate of the *Newspapers Advertisers' Association*, directly to the contrary.

Again, at the top of page 8 of a "Memorandum by the Assistant Attorney General for the Post Office Department on postal 'fraud-order' law," it is said:

"In a circular issued July 17, 1905, he (Lewis) said: * * * Personally, to the last dollar I have in the world—even to my own home—I pledged my possessions to protect every stockholder from a penny's loss who stands by me and our bank in the hours of this attempt at its destruction.

"In March, however, Lewis's residence, claimed by him to be of value of \$65,000, was transferred to a member of his family, and title to the property now stands in her name, notwithstanding his promise that it should stand for the protection of the stockholders of the bank."

The pamphlet is dated December 29, 1906. The March indicated is, therefore, the March of 1906. Yet on February 5, 1906, Frederick Essen as receiver had certified (as quoted, *supra*) that "every loan and investment * * * has been liquidated 100 cents on the dollar * * * and I have already declared dividends to the stockholders of 85 per cent." Lewis having made himself personally liable for the remaining 15 cents. The house would be thus released as security. But even without this, the statement is false. For the accounts of the receiver show that Mrs. Lewis, ("and title to the property now stands in her name"), paid for the house at the rate of \$30 a front foot.

These misstatements, the evidences of overactivity on the part of Fulton, the apparent discrimination against Lewis at the St. Louis banks as reported by Dr. French, the failure to bring Lewis to trial though some of the indictments have pended two full years, or other factors, have produced grave suspicion among western business men as to the substance of any of the Government's charges against Lewis. How pronounced this feeling is will be manifest from the following:

Representative Overstreet, after rather a full discussion of the Lewis case, expressed to me decided doubt whether or not the Government was justified in proceeding against Lewis so severely.

Nathan Frank told me that if the Republicans had ever had a chance to carry Missouri a second time, this case had cost them that chance; that he had been a member of a committee of business men which had counted the original orders of subscription and that he knew the Government's contentions as to them were mistaken; that he did not believe Fulton's superior officers would hear any statement of the case which brought into question any step they had taken.

Walter Stevens told me it was one of the saddest experiences of his life "to realize that the postal authorities did not want to do the honest thing in this case."

John A. Lewis said in my hearing that the effect of the inspector's course in this case was to make every banker in St. Louis fearful of their power and that the inspectors had pursued Lewis as he had never known any citizen to be pursued.

Mr. Lesau gave it as the opinion of 1 business man in 24 that "Lewis might be guilty;" of 3 that "they did not know;" of the remaining 20 that they were "morally certain that Lewis was innocent."

Talks with former judges in Illinois, with a county judge at Paris (who said the case was making Democratic capital in Cannon's own district), with strangers in trains, with 110 men all told, failed to reveal a single one who, having knowledge of the case did not describe the Government's course as an "outrage."

Former Gov. Francis, holding this view, did not hesitate to communicate it to the editors of the New York Times. The other papers named obtained their understanding of the case by separate inquiry on the part of persons concerned in their management.

Mr. Cortelyou replied to particular portions of this statement as it was being made. Chiefly he objected that I had not seen all of the record. He thought I ought to see a comprehensive memorandum he had prepared on the case before I finally judged of the Government's course in it.

(NOTE BY MR. LAWSHE.—I have since seen the memorandum indicated and read it carefully. Concerning it I have written Mr. Cortelyou: "I have read the memorandum you spoke of and thank you for letting me see it. Much that is in it impresses me deeply; as to parts of it I suspend judgment; but you will have a good gauge of the impressions I brought from the West when you know that generally it has not shaken my personal view.")

In regard to the mistakes contained in the several memoranda, Mr. Cortelyou said he was not responsible for those pamphlets. He made conclusive answer to the report (as credited to Mr. Fulton) that he had promised either or both of them preferment if they "finished Lewis," etc. He could not believe the report of Fulton's statements to the banks, though he agreed the testimony of the bank presidents was most impressive. He regretted strongly that Fulton had not been in St. Louis to answer directly to me the questions I had raised. Dyer had not talked to the department as Mr. Lesau reports he has talked since retiring from office. He had not known the Association

of Advertisers had made an investigation into the subscription lists of the magazines and, with me, attached great importance to its findings. He could not understand why Mr. Frank and others thought the department would not hear any representations as to this case which came from any responsible person. He, himself, had not meant to do and would not do injustice to anyone.

I then urged the need to the administration of making manifest in results its disposition to be fair, if the disfavor of the business men I had encountered was to be counteracted. To that end I asked him to arrange with the Attorney General that the present district attorney for St. Louis be summoned and asked—not perfunctorily, but specifically—whether or not the indictments against Lewis were sustained by adequate showing of fact. If they were not, I suggested the wisdom of abandoning them with a statement to the press which should give the reasons for that action. Mr. Cortelyou replied that such advice could hardly go from him to a department with which he was not connected. He agreed, however, to arrange that the district attorney should be summoned and, in the event that the indictments were found to be without sufficient foundation, he would use his personal influence to have them abandoned immediately. Moreover, though not directly and explicitly stated, I think it fair to say we both understood that in the event the indictments were found to be sustained he would use his personal influence to have them brought to trial, without further delay.

Mr. Cortelyou asked if I had brought any charges against any inspectors or Mr. Goodwin. I replied that Mr. Best and business men who shared his attitude toward this case had undertaken to prepare specific charges against certain inspectors and Mr. Goodwin; that they had four such cases ready; and that Mr. Best waited on Mr. Cortelyou's convenience to lay the facts before him. Mr. Cortelyou made it plain that he could not conveniently hear Mr. Best on such a matter before October 1.

Then followed substantially the following:

Would Mr. Cortelyou look with disfavor on the readmission of the two Lewis magazines to the second-class privilege? No.

Would he oppose it? No.

What would be required, in his judgment, for the readmission of the magazines? They must meet the requirements of the law.

What did he regard as the requirement of the law in this case as to "nominal rate?" He did not mean that Lewis must increase the price of his magazine to 25 cents a year, or anything like that.

As to "being published primarily for advertising purposes"? Well, the magazines would be judged for what they were when offered for readmission, not for what they had been.

As to a "legitimate list of subscribers"? Lewis must satisfy Mr. Lawshe.

Did Mr. Cortelyou feel that it was fair to shut a certification like that of the Association of Advertisers on the ground that no count could be made? No. He was surprised to know that the Association of Advertisers had made such a certification. He would be inclined to attach as much importance to it as I.

Might I, then, write Mr. Lewis to make application for the readmission of his magazines to the second-class privilege on the assumption, by me, that Mr. Cortelyou would not look with disfavor on their readmission to the second-class privilege? Yes.

Would Mr. Cortelyou pave the way for me to say as much to Mr. Lawshe? in order that Mr. Lawshe might know how I became interested, that I was honest, that I had begun my investigation through a desire to help Mr. Cortelyou and the administration, and that I still held to those purposes, though I sympathized with Mr. Lewis and liked him? Yes.

So much, in effect, covers the ground of the interview. In some particulars Mr. Cortelyou did not think it necessary to hear all the details here set forth. But there is nothing in this memorandum which he did not understand me to be ready to cite to him. It should be understood, also, that some part of the talk was personal in its nature and that I have thought it not necessary to brief those portions of the interview in such a memorandum as this.

This report covers 21 type-written pages. It shows that Albert was inspired to make his investigation by what he deemed to be a wrong done by the Government to E. G. Lewis and the institutions of which he was the creator. The report also shows that it was generally conceded that the ex-Postmaster General still controlled the Post Office Department in so far as its dealings with these magazines were concerned.

The report says that before going out Mr. Cortelyou urged Albert to examine the record of the case in Mr. Goodwin's office. Goodwin, be it remembered, was the Assistant Attorney General for the Post Office Department. If the case had been handled "along the usual lines," the record would not have been in Mr. Goodwin's office, but in the Classification Division of the Bureau of the Third Assistant.

The report then goes on and states substantially that a careful study of the situation satisfied Albert that the Government could not convict Lewis on any of the indictments. Similar views of the case as a whole were held in the offices of the New York Times, New York Sun, St. Louis Globe-Democrat, St. Louis Republic, Chicago Record Herald, Chicago Tribune, Indianapolis News, and the Washington Times.

That Albert found it had been let out in St. Louis that while in Washington Wyman and Fulton were told that they must "put Lewis out of business or make room for some one else."

Mr. AUSTIN. You say that they were told that?

Mr. MADDEN. Albert says that in his report

That Cortelyou told them this fight must be gotten out of the way before spring. It was a dirty one, and would not do the Republican Party any good, and that the new Postmaster General would assist him (Fulton) in finishing Lewis.

That Cortelyou had given his photograph to each of them (Fulton and Wyman) and promised them his support in preferment for office if they put Lewis out of business.

Mr. AUSTIN. Who makes that statement about Mr. Cortelyou?

Mr. MADDEN. That is in that report about Mr. Albert. I am making a comment on that report.

Mr. AUSTIN. You say he submitted that report to Mr. Cortelyou?

Mr. MADDEN. No; to the then Third Assistant Postmaster General.

That it was reported Fulton claimed to be the brains of the case and that he wrote all the statements given out by the department.

You will remember Fulton was the man in St. Louis.

Mr. AUSTIN. The inspector in charge of that division?

Mr. MADDEN. Yes, sir.

That business men of unquestionable standing regarded Fulton with strong suspicion and called him at best a zealot.

That Postmaster Wyman said that he never wrote a letter in the case. Fulton wrote them; he just signed them.

That all the business men to whom Albert had talked thought the Post Office Department should have waited either upon the action of the department of state of Missouri or the Treasury of the United States before it moved upon the bank.

That bankers, talked to, had told Albert Fulton had warned them not to receive Lewis's accounts, either business or personal, or fraud orders would be issued against them.

Think of that, gentlemen.

That one of the bankers, referring to the indictments, said in justice to his depositors he could not give Lewis any longer the ordinary banking courtesies.

That all the persons interviewed characterized the withdrawing of the mail privilege as outrageous, and regarded it as evidence of a purpose to ruin Lewis before he was brought to trial.

That the editors of the publications interviewed regarded their own newspapers as much subject to exclusion from the mails as the Lewis magazines.

That one prominent man, named, said it was the "saddest experience of his life to realize that the postal authorities did not want to do the honest thing in this case."

Mr. AUSTIN. I am wondering in my mind why they did not want to do the honest thing.

Mr. MADDEN. I never could tell myself. I assure you, sir, the thing might have been fixed up very easily, and all that Lewis prayed for was to know what he was doing that was wrong in order to save his business, but they would not tell him, and yet everybody else could get all the information from the department.

That the investigations disclosed that every banker in St. Louis was fearful of the power the inspectors had exercised.

That the 110 persons interviewed, without exception, described the Government's course as an outrage.

The Albert report goes on to point out the untruths which appeared in the pamphlet of March 19, 1907, and says it seemed that the Government would be overwhelmed when Lewis was permitted to answer.

The report also calls attention to the "remarkable letter," meaning the one sent out by Fulton April 20, 1907, the last placed in the record, and to another pamphlet which was issued December 29, 1907, and points out false statements in that.

The report states that an ex-Member of Congress had said the officials would hear no statement which brought into question the steps they had taken.

Albert states that he urged the necessity of a showing of a disposition to be fair and asked whether Cortelyou would look with disfavor on the readmission of the two magazines to the mails.

He recites that upon what had taken place between Cortelyou and him he was to advise Lewis to apply for readmission of his magazines. "Mr. Cortelyou would not look with disfavor on their readmission," but they must comply with the law.

The report closes with the statement by Albert that he had begun his investigations with a desire to help Mr. Cortelyou and the administration, and that he still held those purposes, though he sympathized with Mr. Lewis and liked him.

Comment: Mr. Cortelyou was now Secretary of the Treasury. If the magazines complied with the law, how could they lawfully be kept out of the second class? Plainly it was not a matter for the new Postmaster General, but for the old, and equally as plainly it was not a question of whether the magazines complied with the law of Congress, as it was applied to all others, but whether they complied with the law as Cortelyou would have it administered to them, regardless of how it was administered to others.

One can not read this report and not understand how generally it was understood that Cortelyou controlled the action of the Post Office Department in this case, even after he left it. Albert's application to him on behalf of Lewis to know whether he would "disfavor" the readmission is significant of that.

Upon the representations of Mr. Albert, who had made the report, which has just been given, the Lewis Publishing Co., after a close

down of seven months, printed an issue of the *Woman's Magazine* (dated Oct., 1907) and "applied" for its admission to the mails at publishers' rates. Notwithstanding the publication had been denied those rates without a hearing, contrary to the advice of the Assistant Attorney General for the Post Office Department as to the requirements of the law, the company was now compelled to file an "application" the same as if it were an entirely new thing, not before classified. The St. Louis postmaster demanded that the company deposit with him in trust the third-class rate (eight times the publishers' rate) while the department was considering the "application."

The department did not "decide" to admit the *Woman's Magazine* to the mails at publishers' rates until December 17, 1907. Owing to the depleted condition of the company's treasury, it had been unable to mail the entire October issue under the prohibitive postage demanded by the postmaster as a deposit in trust. The effect of the delay was that the large part of the October issue not mailed, because of prohibitive rate, had to be destroyed, and the uncertainty of what the decision would be prevented the getting out of the succeeding November and December issues.

These circumstances compelled the company to reimburse advertisers for that part of the October issue not circulated and to cancel advertising or reimburse the advertisers for the two issues which had failed because of the delay. The consequential losses were tremendous, for the company was at an additional disadvantage in soliciting future advertising on account of the uncertainty of whether it would be permitted to circulate its publications at all, or whether the circulation from issue to issue would be regular. The president of the company has stated that the loss due to these circumstances alone amounted to approximately \$200,000.

The *Woman's Farm Journal* was admitted in January, 1908.

The company now hoped that, notwithstanding its crippled condition, the loss of confidence and prestige and all that occurred to make it a discouraging, up-hill fight, it might be possible to revive its business and place itself and its publications on a sustaining and profitable basis and make good on some of its tremendous losses.

Every business, but especially a publishing business, because of dealing with its patrons at long range, depends upon public confidence. Having that in the greatest degree, the company had built up its business to the proportions and to the position it occupied, as the record shows, before the governmental assault began in March, 1905. The two years' persistent campaign, as described, had completely destroyed the confidence of both the reading and advertising public.

The struggle of rehabilitation continued about two years, but the public mind had been so tainted that it was hoping against hope. The two magazines were down and out. The company, on October 15, 1910, after the expenditure of much effort and money, decided that it was impossible to overcome the blight of the governmental assault and threw its magazines overboard, a sacrifice to the wanton abuse of governmental authority and power.

(A copy of the last issue of the *Woman's Magazine*, dated November, 1910, and a copy of the last issue of the *Woman's Farm Journal*, dated October, 1910, are herewith submitted as exhibits, and filed with the clerk after identification by reporter.)

Mr. TOWNER. Wait a minute, please. Of course I presume it would be practically impossible to print these in full in the record.

Mr. MADDEN. I do not imagine they would be printed in the record.

Mr. TOWNER. You do not desire that that should be done?

Mr. MADDEN. No, sir.

Mr. TOWNER. Are there any parts of them that you would like to have go in the record?

Mr. MADDEN. I desire this much to appear in the record; that as they were readmitted in December and January, 1907, after a nine months' suspension, due to the Postmaster General's order of March 4, 1907, they were exactly the same publications; they contained substantially the same advertising, and they were sold at the so-called nominal rate—10 cents a year.

Mr. TOWNER. Now, Mr. Reporter, will you be kind enough to mark these particular copies, so that we will know that these are the official copies?

Mr. McCoy. And let them be filed with the clerk of the committee.

Mr. MADDEN. There are two more which I would like to have go in. These are the ones as they were in existence at the time of "throwing them over," as I expressed it.

Mr. McCoy. Specify the dates which appear on them.

Mr. MADDEN. Yes.

Mr. ALEXANDER. Let the record show that Mr. Madden here offers, as exhibits in this case, copies of the Woman's Magazine, volume 13, No. 5, dated October, 1905, and the Woman's Farm Journal, No. 10, dated October, 1905. These copies are to be introduced as exhibits in connection with Mr. Madden's testimony.

These were magazines as published at the time the investigation was made?

Mr. MADDEN. Yes.

Mr. ALEXANDER. Mr. Madden now offers in evidence a copy of the Woman's Magazine, volume 22, No. 3, of November, 1910; also a copy of the Woman's Farm Journal, volume 23, No. 4, of October, 1910.

These were the magazines last published, the last issues of the magazines, before final suspension?

Mr. MADDEN. That is right.

Mr. TOWNER. Would it not be a good idea to have an identification mark put on each of those magazines?

Mr. ALEXANDER. Yes.

(The copies of the magazines referred to were marked by the reporter as follows: "Exhibit A—A. F. G." "Exhibit B—A. F. G.," "Exhibit C—A. F. G.," and "Exhibit D—A. F. G.")

Mr. MADDEN. I think I have two more here that I would like to put in evidence at the same time. If you are going to suspend now, I will see if I can find them before 2 o'clock.

Mr. ALEXANDER. The clerk will take possession of these magazines introduced in evidence by Mr. Madden.

We will take a recess now until 2 o'clock.

(Whereupon, at 11.50 o'clock a. m., a recess was taken until 2 o'clock p. m.)

AFTER RECESS.

The committee met at the expiration of the recess.

Mr. ALEXANDER. You may proceed, Mr. Madden.

Mr. MADDEN. At this point, I submit as an exhibit a letter of notification dated April 19, 1906, addressed to E. G. Lewis, president of the Lewis Publishing Co., notifying the company of the granting of a hearing on its appeal from the action of the local postmaster on the matter of excess copies.

I also submit a copy of a letter of the same date, April 19, 1906, to the postmaster at St. Louis, calling upon him for information or evidence or both concerning his ruling. I also submit a letter of the same date to Mr. W. J. Vickery, chief of post-office inspectors, calling upon him for evidence to be used at the hearing to be given the publishers.

These letters are all from the Third Assistant Postmaster General. (The letters referred to are as follows:)

EXHIBIT No. 42.

APRIL 19, 1906.

Mr. E. G. LEWIS,
President Lewis Publishing Co.,
St. Louis, Mo.

DEAR SIR: The ruling of the postmaster at St. Louis, dated April 6, concerning the excess mailings of the Woman's Farm Journal and the ruling of April 12, concerning excess mailings of the Woman's Magazine, have been reported to this office with notice that you had appealed from the ruling in the case of the Woman's Farm Journal. Your letter to the Hon. Jesse Overstreet with accompanying statement in which that appeal appears to be embodied has also been received by this office. Although these latter papers can not in strictness be said to constitute an appeal to this office from the ruling of the postmaster, nevertheless they will be treated as such.

As a result of his investigations the postmaster has found and determined that the legitimate subscriptions to the Woman's Farm Journal number not to exceed 141,328, entitling the publisher to mail samples not to exceed an equal number, and that the subscriptions to the Woman's Magazine number not to exceed 539,901, entitling the publisher to mail samples not to exceed that number.

With regard to your appeal from the ruling of the postmaster as to excess mailings, I have to inform you that the facts found by the postmaster will, in the absence of evidence to the contrary, be taken as prima facie correct. You will be accorded an opportunity at this office April 27 next at 2.30 p. m. to present any and all evidence to the contrary which it may be your wish to lay before me for consideration in connection with your appeal.

In this connection you are also informed that the question of the right of these publications to second-class entry is in dispute.

Respectfully,

(Signed) EDWIN C. MADDEN,
Third Assistant Postmaster General.

(Indorsed:) April 19, 1906. To E. G. Lewis, notifying him he will be heard April 27, 1906, on appeal from ruling of postmaster, St. Louis. (Upon request of Lewis, date of hearing subsequently changed to April 30.)

APRIL 19, 1906.

POSTMASTER, St. Louis, Mo.

SIR: Your letter of April 11, inclosing a copy of your letter of April 6 to the Lewis Publishing Co., a copy of their reply and of receipt given them for deposit, and your letter of April 12, inclosing a copy of letter of the same date to the Lewis Publishing Co., were all received and have been considered by this office and by the Postmaster General.

An investigation into the second-class privileges of the Woman's Farm Journal and the Woman's Magazine is now being made by this office. It involves

an inquiry into the number of copies of each publication which, so long as these publications remain in the second class, should be admitted to the mails monthly at the rate of 1 cent a pound.

In your letter of April 11 you state:

"The number of 141,328, as representing the legitimate subscriptions to the 'Woman's Farm Journal,' and the number 539,901, as representing the legitimate subscriptions to the 'Woman's Magazine,' are based on a count made of the current subscription-card records of these publications as kept and submitted by Mr. Lewis, president of the company, which count was made by inspectors in conjunction with 54 trusted and experienced clerks from my office. The accuracy of this count has been confirmed by replies to inquiries made since by clerks in my office, who, from the monthly mailings of each publication, sent since October, 1905, have selected a representative list of names and addresses from the mailings thereof upon which to base these inquiries, and to thoroughly and fairly test the legitimacy of the list.

"That the legitimate list of subscribers reaches even the numbers above indicated is challenged, as recent developments show practically a thousand subscriptions obtained in one instance at the rate of 5 cents per annum, through names furnished by an advertiser interested in the circulation of the publications for advertising purposes. This is representative of other like cases brought to our attention. Another illustrative case shows over 1,500 subscriptions obtained since January 1, 1906, by so-called clubbing arrangements with another newspaper by which the Woman's Magazine is practically being sent gratis as a premium, the nominal rate of 5 cents per annum being charged.

"This office is confident that it has facts and evidence to enable it to maintain its position fully against any showing that the Lewis Publishing Co. may submit in connection with their appeal to your office. Further report will be submitted along the lines made necessary as soon as the claims of this company are received by me."

You are accordingly requested to furnish this office at once, for consideration in such investigation and the appeal of the Lewis Publishing Co. from your ruling in the case of the Woman's Farm Journal, all the evidence referred to in the letter quoted, as well as all other evidence in your possession bearing upon the question as to the number of legitimate subscriptions to each of these publications, the number of sample copies mailed, and the excess over such legitimate list and samples. This evidence should reach me before Friday, April 27, on which date the publisher will be heard on his appeal from your ruling.

Respectfully,

EDWIN C. MADDEN,
Third Assistant Postmaster General.

P. S.—If the originals of the evidence referred to can not for any reason be sent, please furnish copies.

(Indorsed :) April 19, 1906. To postmaster, St. Louis. In regard to hearing of Lewis Publishing Co. on appeal April 27.

APRIL 19, 1906.

Mr. W. J. VICKERY,

Chief Post-Office Inspector, Post Office Department.

DEAR SIR: As you may remember, the postmaster at St. Louis, Mo., under date of April 11, advised this office that he has determined, in the case of the Woman's Farm Journal, published by the Lewis Publishing Co., of St. Louis, that the legitimate list of subscribers to such publication numbers 141,328, and that he has held that the transient second-class rate would be required on all copies mailed in excess of such legitimate subscriptions, numbering 141,328, together with samples not to exceed that number, or a total of 282,656.

From the decision of the postmaster the publisher has appealed and deposited \$3,000 to cover postage at the rate of 1 cent per copy upon anticipated mailings of 300,000 excess copies. The postmaster states that his decision was based upon the facts developed in the investigations made by his office and the inspectors of your division, and that the particulars were fully reported to you.

The Postmaster General having directed me to pass upon this appeal, I have to request that you will oblige me with the evidence referred to, and any other evidence that may be in your office bearing upon the question as to the number of subscribers properly constituting the legitimate list, if any, of the Woman's Farm Journal.

1216 EXPENDITURES IN THE POST OFFICE DEPARTMENT.

Mr. Bacon, superintendent of the classification division, informs me that he spoke to you about this evidence yesterday morning, but was unable to obtain it. If it can not be given in its original form, copies will be sufficient.

As the Postmaster General has directed this case to be taken up at once, an early reply is requested.

Respectfully, yours,

EDWIN C. MADDEN,
Third Assistant Postmaster General.

(Indorsed:) April 19, 1906. To chief post-office inspector. Asking for report of inspectors in re Lewis publications.

I also submit, as an exhibit, the reply of W. J. Vickery.
(The letter referred to is as follows:)

EXHIBIT No. 43.

POST OFFICE DEPARTMENT,
CHIEF POST-OFFICE INSPECTOR,
Washington, April 23, 1906.

SIR: Answering your letter of the 19th instant, I regret that I am unable to give you either the originals or copies of reports of inspectors bearing upon the circulation of the Woman's Farm Journal of St. Louis. It is the custom of this office, whenever an indictment has been returned in a matter which has been investigated by post-office inspectors, to intrust the entire case to the Department of Justice. Following this custom, all papers bearing upon the business methods of Mr. E. G. Lewis were forwarded to St. Louis to be placed at the disposition of the United States attorney, at whose instance the indictment was returned in this case. I have no doubt that Col. Dyer, the United States attorney, will permit your representatives to have access to all these papers and to make copies, if they are needed, so far as may be done without interfering with the criminal prosecution.

As Mr. Lewis has very bitterly assailed the character, motives, and intelligence of the inspectors who have made the investigation, it is suggested that an investigation on independent lines as far as possible will be more satisfactory to this office, and I have to ask that the statements of the inspectors shall not be used in your investigation unless your representatives shall be satisfied that they are founded upon facts.

Very respectfully,

W. J. VICKERY,
Chief Inspector.

HON. EDWIN C. MADDEN,
Third Assistant Postmaster General.

The reply of the postmaster to the letter of April 19, 1906, of the Third Assistant Postmaster General is already in the record, dated April 23, 1906.

I also submit a copy of a memorandum of the Third Assistant Postmaster General to the Postmaster General dated March 22, 1906, conveying to the Postmaster General a copy of the letter written to the chief post-office inspector, under the same date, March 22. The significance of the copy is that it outlines the policy of dealing with questions concerning the second class of mail matter under the usual practices in the department.

(The copies of the memorandum and letter are as follows:)

EXHIBIT No. 44.

[Memorandum for the Postmaster General.]

MARCH 22, 1906.

Gen. CORTELYOU: For reasons given in previous memoranda all correspondence in relation to the cases of the Woman's Farm Journal and Woman's Magazine, of St. Louis, which reached this office have been submitted to you with the request that if you wished me to take any action, you would so direct. This has been due to the fact that the cases have not arisen nor have they been handled by this bureau, and I felt it important not to complicate or confuse

the action of another officer in regard to the cases by any action of mine. In response to none of these memoranda and letters referred have you given me any instructions.

I am now in receipt of a letter from the inspector in charge at St. Louis, referred to me by the chief post-office inspector, asking that the postmaster at St. Louis be instructed by me in regard to the rate of postage on certain copies of the *Woman's Farm Journal* now detained in the St. Louis post office.

In order that you may be advised fully of my action I hand you herewith a copy of the letter and reference and a copy of my reply addressed to the chief post-office inspector. In this connection I beg to draw your attention to my memoranda of November 23, 1905, and March 17, 1906.

If you desire that I issue any instructions direct to the postmaster, please inform me.

Respectfully,

EDWIN C. MADDEN,
Third Assistant Postmaster General.

MARCH 22, 1906.

Mr. W. J. VICKERY,
Chief Inspector, Post Office Department.

DEAR SIR: Your communication of the 19th instant, transmitting one from R. M. Fulton, inspector in charge at St. Louis, Mo., in regard to the *Woman's Magazine* and the *Woman's Fam Journal*, is received.

Inspector Fulton states that the postmaster at St. Louis reported to this office under date of November 11, 1905, certain excessive mailings of the publications in question and asked to be instructed in the matter, and that the postmaster under date of March 15, called attention to the letter of November 11 and renewed his request for instructions. The inspector further states that it will be necessary to submit as evidence in the prosecution of certain court cases of the Lewis Publishing Co. a statement showing the legal rate of postage chargeable on excessive mailings of a publication admitted as second-class matter.

No reply was sent to the postmaster at St. Louis in response to his letter of November 11. Owing to the unusual circumstances of the case the letter was submitted to the Postmaster General and his instructions were asked before any action should be taken by this office. The Postmaster General gave no instructions. The letter of the postmaster dated March 15 has, for the same reasons, also been submitted to the Postmaster General, and this office is awaiting his instructions before proceeding.

Regarding the rate of postage chargeable on excessive mailings of sample copies of a publication admitted as second-class matter, you are informed that the rule of the department is laid down in paragraph 12 of Circular III, appearing on pages 1040-1041 of the January, 1905, Postal Guide, which reads as follows:

"12. If sample copies in excess of the number hereinbefore specified (see paragraph 10) be presented for mailing, they are not entitled to the pound rate of postage. They are chargeable with the transient second-class rate of 1 cent for each four ounces or fraction thereof, to be prepaid with stamps affixed, on each separately addressed copy or package of unaddressed copies."

The foregoing rule is grounded upon the theory that when a publisher purports to send more sample copies than he is entitled to as publisher, he ceases to send them as such publisher and they cease to be sample copies and are subject to the provision of law establishing the rate on newspapers and periodical publications of the second class when sent by other than the publisher or news agents. (Act of June 9, 1884, chap. 73, 1 Supp., R. S., 438; sec. 455, P. L. and R. See also sec. 448, P. L. and R.) This rule charging the transient second-class rate upon excess sample copies is applied in cases where prima facie such excess mailing is not sufficient of itself to indicate that the publication should be excluded from the second-class rate by reason of its being "designed primarily for advertising purposes, or for free circulation, or for circulation at nominal rates." Where the mailing of such sample copies is, however, sufficient to justify that inference, the practice is not to make any different charge for the excess sample copies, but to determine that the publication itself is not entitled to the second-class rates at all, and that all copies

in consequence must be charged the third-class rate. Whether the excess sample copies in the case in question, therefore, are chargeable at the pound rate, at the transient second-class rate, or at the third-class rate depends upon the solution of the following matters of fact:

First. Whether such copies are in fact in excess of 100 per cent of the copies actually circulated as to subscribers within the regulations of the department. If not in excess of 100 per cent, they are chargeable at the pound rate. If in excess, they are chargeable at the transient second-class rate or the third-class rate, dependent upon the answer to the second question.

Second. Whether or not such excess sample copies are, either standing alone or in combination with other relevant facts, sufficient to indicate that the publication is "designed primarily for advertising purposes, or for free circulation, or for circulation at nominal rates." If the facts in the possession of the postmaster are sufficient to justify the conclusion that these copies are in fact in excess of 100 per cent of the copies which the publisher is entitled to send as to subscribers, then it is the duty of the postmaster to charge upon such excess the transient second-class rate. The facts necessary for this conclusion are not before this office and no decision thereon has been made.

Third. If, in addition to finding that the copies are in fact excess copies, it is also found that such excess copies are sufficiently numerous in the judgment of the postmaster to justify the inference that the paper is "designed primarily for advertising purposes, or for free circulation, or for circulation at nominal rates," then those facts should be laid before the department, in order that a hearing upon them, required under the act of March 3, 1901 (ch. 851, §1 Stat. L., 1107; sec. 444, P. L. and R.), may be had for the determination of the fundamental question whether the publication itself is entitled to the second-class mailing privilege at all.

While the postmaster may not deny the second-class mailing privilege to a publication except upon a determination to that effect by the department after a hearing, it is his duty, assuming the right to that privilege, to charge the lawful rate upon every copy passing through his hands. Therefore, if the postmaster has before him facts which, in his judgment, justify his determining these copies to be subject to the transient second-class rate, he should notify the publisher of that fact and demand that such rate be paid before transmission.

Both letters of the postmaster (that of November 11, 1905, and that of March 15, 1906) having been, as heretofore stated, submitted to the Postmaster General and his instructions asked, it is not deemed advisable for this office to instruct the postmaster in advance of receiving the Postmaster General's directions.

Respectfully,

EDWIN C. MADDEN,
Third Assistant Postmaster General.

(Indorsed:) March 22, 1906. To chief post office inspector, in re legal rate of postage on excess mailings of Lewis publications.

When I left off this morning I was coming to the losses of the Lewis Publishing Co.

The losses of the Lewis Publishing Co., direct and indirect, due to the conspired official campaign, the circumstances of which are now in the record, have been tremendous. At the most conservative estimate they are at least \$3,000,000.

Against a combination such as this the citizen and his business is completely helpless. From the star chamber in Washington the movements were directed. The field operations were in great part secretly conducted. The agents of the Postal Department worked industriously in every city, town, and hamlet. The communications from those in command of the campaign, both to their agents in the field and to the patrons of the company, were "confidential." The whole force, power, and resource of the Government was at work. Not less than a quarter of a million of Government funds was spent in this campaign of annihilation.

Concerning specially the Postmaster General's conduct in this case, this may be said:

No judge should preside over or decide a cause in which he is interested. The ethics of the judiciary discountenance and prohibit such an act.

In this case the Postmaster General, constituted by law and regulation a judge in certain postal matters, immediately upon assuming office takes a peculiar and unusual personal interest in two certain cases.

Upon those cases, in accordance with the recommendations of his special representatives in the field, he desired "concerted action" by the departmental officers.

The postal laws and regulations fix jurisdiction in and make the Postmaster General the only judge in one of those cases.

The same postal laws and regulations fix original and exclusive jurisdiction in the other case in the Third Assistant Postmaster General, with the right of appeal to the Postmaster General.

The functions performed by both officers are quasi-judicial.

The Postmaster General decided, as his field representatives recommended in the case, within his original jurisdiction.

The Third Assistant found no authority of law or fact for deciding in the other case as the field representatives of the Postmaster General had recommended, and called attention to the irregularity of the procedure.

The proposed "concerted action," therefore, failed.

There was no appeal to the Postmaster General, and there could be none, for he forbade announcement of the decision in the usual and orderly way.

Now, the Postmaster General, by reason of his peculiar and unusual personal interest in the case coming within the original and exclusive jurisdiction of the Third Assistant, steps down from his high plane, and secretly and indirectly assumes the rôle of prosecutor in an 18-months' relentless campaign, in which he is able to employ the irresistible power and resources of the Government.

For the second time the case is brought up for consideration and decision to the Third Assistant. Now, however, the "recommendations" are not by the special field representatives of the Postmaster general, but by the local postmaster, which gives the case the appearance of regularity or a proceeding "along the usual lines" of orderly administration.

For the second time the Third Assistant, on February 7, 1907, finds neither law nor fact to warrant the decision recommended by the local postmaster and desired by the Postmaster General, and he so decides.

At this point the Postmaster General steps in, and by argument, persuasion, and intimidation exerted upon the Third Assistant, seeks to have that officer reverse his second judgment and sustain the recommendations of the local postmaster.

The persuasion fails in its purpose.

The Postmaster General now abandons his attitude of prosecutor and assumes that of judge. He, for the second time, suppresses the decision of the Third Assistant, and, violating the regulations as to jurisdiction, himself decides according to the local postmaster's

recommendations, and as if it were in his jurisdiction and the Third Assistant had not acted at all.

There had been no appeal to the Postmaster General, for neither the company nor the local postmaster had yet been advised of the decision of the Third Assistant.

Had the Third Assistant's decision not been suppressed it would have left the company to enjoy the continued use of the mails for its publications at publishers' rates until it could be shown in the usual and orderly way at a hearing, as provided by law, that the publications were not entitled to those rates.

The substituted decision of the Postmaster General supplied alleged evidence upon which to prosecute the indictments; it mulcted the institution of the money on deposit as postage on alleged excess mailings; it furnished the pretext for the bringing of civil suits to collect more excess postage, to the further harassment of the institution and the destruction of its commercial credit.

But the decision as to excess copies was not all. The Postmaster General went further. Disregarding again the regulations as to jurisdiction, he takes to himself the Third Assistant's function to decide in the first instance whether the company's magazines were entitled to continue in the second class. To give the record proper form, his decision states that it was made upon a consideration of all the evidence, which was untrue; that it was made upon granting the company a hearing as required by law upon the questions of whether it had legitimate lists of subscribers, whether the magazines were designed primarily for advertising purposes, or for free circulation, or for circulation at nominal rates, which was untrue, both as to the hearing before the Postmaster General and as to the hearing before the Third Assistant. After making those false statements, and based upon them, the Postmaster General orders the local postmaster to violate the law, and summarily and without notice deny the use of the mails at publishers' rates to the company for its magazines. In the same breath the Postmaster General writes the Third Assistant and says he "could not wait" for that officer's finding upon those matters, as if that finding would have made any difference had it been in favor of the company.

This case is without precedent. It stands alone in the history of executive action. Nothing like it has ever occurred, and probably nothing like it will ever occur again, for in the light of what is now known Congress must enact laws to protect the people in the future.

Cooley is one of the greatest law writers. He has this to say on the subject of torts, conspiracy, and participation:

Some torts are in their nature joint torts, because the action of several is required to accomplish them. * * * Such a case would be a conspiracy to ruin one in his reputation or to defraud him of his property, originating in combination and carried out by joint action, or at least in pursuance of a joint arrangement and understanding. If conduct is complained of which only becomes actionable because of the dishonest combination to accomplish some wrongful act, this combination must be shown, and one man can not combine with himself; he must have associates. * * * The damage is the gist of the action, not the conspiracy; and though the conspiracy may be said to be of itself a thing amiss, it must nevertheless, until something has been accomplished in pursuance of it, be looked upon as a mere unfulfilled intention of several to do mischief. When the mischief is accomplished the conspiracy becomes important, as it affects the means and measures of redress, for the party wronged may look beyond the actual participants in committing injury and join with them as defendants all who conspired to accomplish it.

Most wrongs may be committed either by one person or by several. When several participate, they may do so in different ways, at different times, and in very unequal proportions. One may plan, another may procure the men to execute, others may be the actual instruments in accomplishing the mischief, but the legal blame will rest upon all as joint actors. In some cases one may also become a joint wrongdoer by consenting to and ratifying what has been done by others.

At this point, Mr. Chairman, I desire to have go into the record, as part of my statement, an extract from a letter dated March 2, 1907, to the Postmaster General, outlining the practice in dealing with this question of excess of copies.

Mr. TOWNER. Whom is that letter from?

Mr. MADDEN. It is from me to the Postmaster General.

Mr. ALEXANDER. You had better recite the fact into the record, then, that it is a letter from Mr. Madden, then Third Assistant Postmaster General, to the then Postmaster General.

Mr. MADDEN. That is right.

(The letter referred to is as follows:)

This rule charging the transient second-class rate upon excess sample copies is applied in cases where prima facie such excess mailing is not sufficient of itself to indicate that the publication should be excluded from the second-class rate by reason of its being "designed primarily for advertising purposes, or for free circulation or for circulation at nominal rates." Where the mailing of such sample copies is, however, sufficient to justify that inference, the practice is not to make any different charge for the excess sample copies, but to determine that the publication itself is not entitled to the second-class rates at all, and that all copies in consequence must be charged the third-class rate.

As already stated, the rule charging the transient second-class rate on excess copies was never contemplated to apply in such cases as the Woman's Magazine and the Woman's Farm Journal. That rule was made for emergency or occasional cases where publications like the daily newspapers or periodicals of the higher class, for instance, the Washington Post or the Munsey Magazine, get out extraordinarily large issues—more than twice the number of subscribers. The question of second-class rights with this type can not well be raised, because of excess mailings of a single issue or a few issues; but it is quite a different matter where the practice is frequent or regular, as it is alleged to be in the case of the Woman's Magazine or the Woman's Farm Journal.

In the case of newspapers and periodicals of the kind mentioned, these large editions are nearly always planned without knowledge of the prohibition of the law, and hence some rule to meet such situations is required. The 100 per cent rule meets the need. It is effective only because publishers are not willing to resist it, even though the department might not be able to maintain it under court review. If resisted, the department would not undertake to enforce it, but would take the alternative of declaring that the publication was not entitled to second-class rates at all. On the latter issue there is no doubt of our being able to maintain our position under court review.

The doubt as to our ability to maintain our rule of charging the transient second-class rate upon excess copies is due to the provision of the act of March 3, 1885 (ch. 342, 1 Supp., 483, sec. 448, P. L. and R.). To the extent of its operation the rule in question sets the provisions of that statute aside, for there, in plain terms, it is stated that the publisher shall be charged only the pound rate and no limit is fixed. Our limit is fixed by a construction put upon the prohibitory clause of the act of March 3, 1879 (ch. 180, sec. 14, 1 Supp., 246, sec. 428, P. L. and R.). If a publisher should insist upon his right to mail excess copies at the pound rate, as provided in the act of March 3, 1885, we would not try to enforce the rule; we would then revert to our right to rule the publication out of the second class altogether.

Now, we have complained that a law, in order to be a law, must be administered uniformly, and I have already cited one case, namely, the Stock Journal's case, as an illustration of where the Postmaster General lifted the requirement of a legitimate list of subscribers alto-

gether and allowed those publications to continue in the second class without legitimate lists of subscribers, or any at all, for that matter.

I will now submit another illustration of that contention. I place in the record as an exhibit to be properly numbered a copy of the Sunday Magazine of the St. Louis Republic, dated February 5, 1911. It is known as part 3. I submit that this is a complete, independent magazine, published in New York, and that in order to evade the requirements of a list of subscribers it is inserted as a part of a dozen different newspapers. By that process it is not required to have any subscribers at all. It violates the law also, because the law limits the mailing of every publication entered to the second class to one post office. This is mailed at a dozen different post offices. While I was Third Assistant Postmaster General the publisher of the Chicago Tribune wrote to me and said that if this was legitimate he desired to print such a magazine for his own publication. The Attorney General was subsequently called in on the matter and asked to decide whether that was a legitimate part of a newspaper, and he advised the department that it was not; that it was independent; and to this day that publication goes as part 3 of a dozen different newspapers without a single individual subscriber, and mailed at a dozen offices, although the law limits its mailing to one, when the law is properly administered. I admit that I should have done something when I was Third Assistant Postmaster General, but I was not permitted to do it.

Mr. BRITT. One moment, Mr. Madden. I will merely state that in the presentation of the Government's side of the case I will put in the record the reports of the Attorney General, volume 25, in which will be the holding of the Attorney General of the United States to the effect that the Sunday magazines similar to this are properly transmittable as mail matter of the second class.

Mr. MADDEN. As part—

Mr. BRITT. I have made my statement. I will simply put it into the record.

Mr. MADDEN. The Attorney General, in his opinion—I am depending upon my memory now—said this was not a legitimate part of a newspaper, but by amending the regulations he thought it might be made so. He did not say it could be. I submit that this is as near a companion for the Woman's Magazine in number of pages, amount of advertising, character, and everything else as could be produced here, and that it goes—whether the Attorney General has said so or not—without a single subscriber by the device of calling it part 3.

Mr. AUSTIN. It is a supplement, is it?

Mr. MADDEN. No, sir; it is part 3.

Mr. MCCOY. Do you want that marked?

Mr. MADDEN. I want it marked as an exhibit.

Mr. ALEXANDER. Do I understand you to say that that is not printed or published by the St. Louis Republic?

Mr. MADDEN. No, sir; it is published in New York, and if you desire to advertise in it you will have to write to the New York office. They evade the requirement of a legitimate list of subscribers, and they evade the limitation of mailing at one post office by sending it out in advance to 12 different newspapers and inclosing it as part 3. With that as an example, several other similar publishing enterprises have grown up, and they are furnishing them to other newspapers in

the same way that this is furnished to 12. They claim 1,300,000 circulation for this publication in that manner.

Mr. AUSTIN. What did you do to stop that practice or to exclude these magazines as supplements or extra parts of those metropolitan papers when you were Third Assistant Postmaster General?

Mr. MADDEN. I considered that an abuse, and took the matter up with the Attorney General, and he held it for a long time; and there was never any possibility of getting to it after I was out of office. I have some memorandum of my argument in the matter against the proposition showing that it was not legitimate.

Mr. MCCOY. That magazine had better be identified in some way now.

Mr. MADDEN. I called it by name there.

Mr. TOWNER. Please mark it as an exhibit, Mr. Reporter, and attach your initials to it.

Mr. MADDEN. It may be retained in the office of the clerk.

Mr. MCCOY. And filed with the committee.

Mr. MADDEN. And filed with the committee.

(The magazine referred to was marked by the reporter "Exhibit E—A. F. G." and filed with the clerk.)

Mr. MADDEN. I think I have already called attention to the case of the Stock Journal, which had been regarded as abusing the privilege as to having a list of subscribers, and the memoranda in the case and the suspension of the law as to them by the Postmaster General are already in the record.

After my decision of February 7, on the question of excess copies—

Mr. AUSTIN. What year was that?

Mr. MADDEN. 1907; February 7, 1907—that no excess copies have been mailed of the Woman's Magazine under the usual rules and practices of the department, the Postmaster General wrote me, under date of February 12 (a copy of his letter is in the case), lifting that suspension, and telling me to go on and administer the law as to them, and also directing a complete change of policy in administering the law. I left office shortly after that, and on March 16—

Mr. AUSTIN. In that connection—I asked you the question this morning—give us the reason why you left the department.

Mr. MADDEN. I decided the Woman's Magazine and the Woman's Farm Journal excess copy question on February 7, 1907; and on February 11, four days later, the Postmaster General called me to his office and said that the President would accept my resignation. I answered that he should have it.

Mr. AUSTIN. Was that Mr. Cortelyou or Mr. von Meyer?

Mr. MADDEN. Mr. Cortelyou. We had some discussion about the case, and Mr. Cortelyou assured me over and over again that it was not on account of this case at all, and he has already testified to that effect on the witness stand. That will clear up your mind on some of those things.

Mr. AUSTIN. What reason did they give for the President's demanding your resignation?

Mr. MADDEN. He told me at the time that it was working out some changes which had been long in contemplation. I had been in office

eight years. The papers, however, had it that it was pretty generally because of the Lewis case. I knew it was because of the Lewis case—that is, as well as a man can know anything in such a way. I told him I could not do any differently. That was on February 11. On February 13—I am glad you called attention to this—he sent me a very long letter, in which he endeavored to have me, or to force me, practically, or to intimidate me, into reversing that decision. The letter speaks for itself; it is in the record. After that, in interviews with him, he was very nice to me and assured me that if I cared to stay in the public service, as he was going to be the Secretary of the Treasury, he did not know but what he might find a comfortable berth for me there. Now, that is not of record; that is simply my statement as to what occurred between the Postmaster General and myself across his desk; but I knew very well it was not sincere and that it was simply a proposition to bribe me to reverse that decision.

Mr. AUSTIN. Postmaster General Cortelyou had no interest in this publication? He was not a stockholder in any competing newspaper, was he?

Mr. MADDEN. Not that I know of.

Mr. AUSTIN. Did he have any incentive or motive in offering you a bribe to change your ruling?

Mr. MADDEN. He would have had to make that ruling if I had not made it, and if I made it it would relieve him, and he wanted that from me, because I was the proper officer to act and it would look better in the record. He wanted it over my signature and not his, and when he found I refused to do that, he was compelled to carry out his purpose by doing it himself.

Mr. AUSTIN. Did you ever know of Mr. Cortelyou attempting to bribe anybody else?

Mr. MADDEN. No; but I construed it that way. Maybe he did not mean it that way, but I construed it that way, and I want it to appear in the record as being merely my construction. That is the way I felt about it. He thought that my position was worth more to me than my honor.

Mr. AUSTIN. How long after you left the service as Third Assistant Postmaster General did you become the agent or representative of the Lewis Publishing Co.?

Mr. ALEXANDER. That has all been placed in the record heretofore.

Mr. AUSTIN. I do not remember.

Mr. ALEXANDER. Yes; Judge Towner brought it out.

Mr. AUSTIN. All right, if it is in the record. I was either not present or did not hear the question, or, of course, I would not have asked it again.

Mr. MADDEN. As I stated, I remained in office after the leaving of Mr. Cortelyou, but I regarded his February 12 order as very extraordinary, and when Mr. Meyer came in I wrote Mr. Meyer and inclosed a copy of Mr. Cortelyou's letter in my letter, calling attention to the extraordinary changes that would be made by these orders, and that it was a complete reversal of the policy and practices of the department, stating that I thought I should call it to his attention before I proceeded.

Mr. Meyer never responded to this letter, a copy of which I desire to place in the record at this point.

(The letter referred to is as follows:)

EXHIBIT No. 45. *

MARCH 16, 1907.

HON. GEORGE VON L. MEYER,
Postmaster General.

DEAR SIR: Under date of February 12 last, Postmaster General Cortelyou sent me the following letter:

"Upon the statement by you last summer, that your duties in connection with the preparation of the data for the Postal Commission, and the fact that such a commission had been authorized by Congress would make it impracticable for you to take up and consider as in the usual course certain cases involving alleged abuses of the second-class mailing privilege, I approved of a postponement of action in such cases until the commission had made its report. Included among the cases of which the consideration was thus postponed were those involving certain stock journals passing in the mails as second-class publications, and which in your opinion were probably abusing seriously the privilege accorded to them.

"As the report of the Postal Commission has now been made and submitted to Congress, it is my desire that all cases involving alleged abuses of the second-class mailing privilege be taken up by your office as promptly as possible and considered, and that there be no hesitancy about excluding from the mails as second-class matter all such publications as are found to be abusing that privilege in such manner as to violate the law, and to subject the Post Office Department to losses of revenue. Each of these cases should be dealt with upon the ascertained facts, and without reference to any other consideration than whether the methods and practices pursued are not violative of law and there is not resting upon the Post Office Department the duty of excluding the publication from the second class of mail matter."

The carrying out of the foregoing instructions means a clear departure from the established policy of dealing with publications by classes with uniformity and consideration of equity. I beg your permission to briefly lay the situation before you for review.

The law establishing the second class of mail matter and the conditions upon which newspapers and periodicals shall be admitted to that class was enacted in 1879. Prior to 1901 the department made little, if any, effort to enforce the provisions and restrictions of the act. From the very first the privilege it conferred was abused. The abuses were of many kinds and they multiplied one upon another, and it was said in 1901 that this class of matter constituted two-thirds of the bulk weight of all the mails and that almost, if not fully 50 per cent of it was not legally entitled to be so classified. Under proper administration this wrongfully classified matter, if mailed at all, would pay the printed-matter rate—eight times as much.

In the latter part of 1901 a reform was undertaken, and it was made known to the publishing industry that the former loose practices were at an end.

The publishers who had benefited by the lax methods of the department were not wrongdoers in a bad sense. Their publications had gained entry to the second class, or had continued in that class, by the implied sanction of the department itself through its failure to interpret and enforce the provisions of the statute with strictness and with an eye to the protection of the Government's interests.

When the first reform orders were published, on July 17, 1901, notice was given that they would not take effect until the 1st of October of that year. They placed new interpretations upon the law. It was deemed right to give notice in advance of their taking effect so that those publishers who could do so would, with them as guides as to the future requirements, have an opportunity of adjusting their businesses accordingly and thereby save their plants, in which large capital had been invested upon the faith of the legality of their publications and practices of long standing.

New orders were required from time to time, and the policy of publishing them and fixing a date for their taking effect and of dealing with publications, class by class, has been followed uniformly. The reform work involved not only the denying of entry from day to day of publications which did not meet the requirements of the law, but of excluding publications already in the second class which did not conform to the new interpretations. The whole work was a slow and gradual process. The more flagrant abuses were corrected one

by one, and at each forward step an interpretation of the law was secured which would prevent their recurrence in the future.

The foregoing recital is merely to show that the policy of the department has from the first been to deal with publications class by class and upon notice from time to time, as we proceeded with the work, of the changes of interpretation necessary to be placed upon each requirement of the law. That method gave publishers who had the essence of the legitimate in their publications the opportunity of saving their businesses. Many in every class are adjustable to a new interpretation by cutting off one or more objectionable features. In no other way would the reform be equitable, just, or successful.

Whenever it appears to the public or to the judiciary that similar publications do not receive similar treatment, or that a particular publication is dealt with in a manner different from that in which another in the same class is dealt with, the construction for which the department is contending in that particular case, however sound, is almost certain to meet with defeat, especially in view of the fact that each construction for which the department contends is a departure from long-established practice. A publisher who is denied the privilege for his publication while other practically similar publications are enjoying the privilege can easily make it appear that he is being sacrificed to the advantage of his competitors, who by his destruction are given a monopoly. Even if our own consciences would justify a proceeding so lacking in fairness, the public approval which is so necessary for the accomplishment of this reform to the end would be wanting.

It must be taken as unquestionably sound doctrine that this department can not afford to deal in a different manner with publications substantially alike and in similar situations. Postmaster General Cortelyou himself, under date of July 19, 1905, affirmed, in a letter to Messrs. J. H. Bromwell and Lucius Weinschenk, counsel for the publishers of several publications of the mail-order type, this very policy; and so we have proceeded with this reform work step by step, trying out each new case in the courts as fast as it could be brought to test, so as to establish for existing law, so far as it was reasonable to apply it to modern publishing conditions, a proper interpretation, judicially sanctioned. This policy has maintained the respect and confidence of even the worst enemies of the reform, and in my opinion it is the only just way to deal with this postal problem.

As you will observe, Postmaster General Cortelyou now directs that cases of alleged abuses be taken up haphazard as they are found, regardless of the class to which they belong, and regardless of any notice in advance of the changes of interpretation of and practice under the provisions of the law. His order completely upsets the present course of procedure. The result must necessarily be that many publications will be excluded upon the ground that they do not conform to the requirements of the law, while other publications with no better rights remain in full enjoyment of the second-class privilege. The stock journals, the only ones mentioned by Mr. Cortelyou as a class, furnish an illustration. We happen to know more or less of the circumstances concerning all of them, and they are in substantially similar situations, but complaints have been made only as to a few. If we did not have such general knowledge of them and were to deal with them on the haphazard plan, the result will be manifest.

I beg to submit to you that this is a very important subject, very complicated, and difficult to understand. It will require much study and some experience to deal with it. I recommend for your review the reports of the Postmasters General and the Third Assistant Postmasters General who have discussed this problem. I also recommend for your review my statement before the Postal Commission appointed by Congress to consider this subject; the report of the hearings before that commission; and the report of the commission to Congress. They will give you an understanding of the magnitude of the problem and of the industry affected, and will, I believe, impress you as to what the effect may be of carrying out the instructions of your predecessor.

As this radical change of treatment of this subject comes at the very beginning of your own administration, I think it proper to bring the matter to your attention for review.

Will you be kind enough to advise this office of your own views on the subject?

Very respectfully,

EDWIN C. MADDEN,
Third Assistant Postmaster General.

Mr. AUSTIN. How did the officers of the Lewis Publishing Co. know that you had copies of all of the post office records bearing on this case?

Mr. MADDEN. They did not know it.

Mr. AUSTIN. How did they first ascertain that fact?

Mr. MADDEN. I do not think they knew anything about it for a year afterwards.

Mr. AUSTIN. A year after your employment by the company?

Mr. MADDEN. Yes, sir.

Mr. AUSTIN. You did not tell them about it?

Mr. McCoy. Do you mean a year after your employment with the company, or a year after you severed your connection with the Government?

Mr. MADDEN. I have no recollection of the exact time, but it was quite a while. I did not know that the records would be of any particular value to them at first. I did not think of it. I looked them up for myself, and subsequently, when I got into their case as I did, I realized that they were of value in that case, and then, of course, I made it known to them. I assume I made it known to them; I do not say that I did; it may have just come about. I do not remember anything definite about that. Is that all, Mr. Austin?

Mr. AUSTIN. I merely wanted to find out the time between your resignation as Third Assistant Postmaster General and the time of your employment by the Lewis Publishing Co. I just asked my colleague on the committee, and he does not recollect your answer. In order for me to learn that, I will have to read through this record. If it is not objectionable to you, I would like to have it.

Mr. MADDEN. I recited it yesterday, but I will recite it again for the purpose of the record. Immediately on assembling here for the afternoon session, I had written it into a statement, and it went into the record as written.

Mr. ALEXANDER. He wants to know when you resigned from the Government service, and when you went into the employ of the Lewis Publishing Co.

Mr. AUSTIN. No; just the time; how many months.

Mr. MADDEN. Between two and three months afterwards, as near as I can recall.

Mr. AUSTIN. Did you have any private or confidential conference with Mr. Lewis about this case during the time of this controversy between Mr. Lewis's company and the department?

Mr. MADDEN. No, sir; never.

Mr. AUSTIN. You did not keep him advised as to what was going on?

Mr. MADDEN. Not at all. How could I? I did not think very well of Mr. Lewis while I was in the department. I thought he was a scab. Nobody could think well of him in the department. As I say, I had that idea of him. The whole department was permeated with it, and it was not until I went out there and saw the men surrounding him, men of high standing, of high position, men of wealth, presidents of banks, an ex-governor of the State, and ex-judges of the State—then I concluded that this whole thing could not be a fraud, as it appeared to the department. I continued my investiga-

tions, and came to the conclusion to accept the proposition to right this wrong finally.

Is that all you wanted?

Mr. AUSTIN. That is all at the present time.

Mr. ALEXANDER. Proceed.

Mr. MADDEN. I assume that these specific items of complaint, as called for in the resolution of this committee, which were transmitted to the Lewis Publishing Co. on May 27, are in the record, and they do not need to go in again.

The next part of the case in due order, therefore, would come under the fourteenth item of complaint of these regulations, which would be the Woman's National Daily case. In that connection I have to say that the Woman's National Daily of the Lewis Publishing Co. was offered for entry in the mails as second-class mail matter in November, 1906. It might have been October, but I think November. Application to the department was accompanied by an elaborate argument on the part of Inspector Fulton against the admission. This was an unusual procedure. As a rule, in such cases, when a publisher applied for admission for his publication at the post office the postmaster would take his sworn statement and then ask him to submit evidence in support of it, and would record in the application, in a place provided for it, his findings from that evidence and send it on to the department.

In this case the procedure was extraordinary and unusual. The inspectors came into it at once, and the tenor of their argument was all against allowing the entry. When it was received in the department, I turned it over to the superintendent of the classification division, Mr. Bacon, and asked him to find out what there was in their statement of the case. If my memory serves me correctly, without reading this document in full, Mr. Bacon found that they were good only on one point. Subsequently I reviewed the same papers and facts as claimed, and sustained Mr. Bacon in a memorandum to him, dated December 4, 1906.

I submit both of those papers, to go into the record at this point.

Mr. ALEXANDER. Those you want printed in the record?

Mr. MADDEN. Yes, sir; those are to be printed into the record.

(The papers referred to are as follows:)

EXHIBIT No. 46

[Case No. 92955-C. St. Louis Division. R. M. Fulton, inspector in charge.]

POST OFFICE DEPARTMENT,
OFFICE OF INSPECTOR IN CHARGE, ST. LOUIS DIVISION,
St. Louis, Mo., November 24, 1906.

Mr. FRANK WYMAN, *Postmaster,*
St. Louis, Mo.

SIR: Answering your letter of yesterday for a statement of such information as may have been obtained by inspectors in the investigation of the subscription lists of the Woman's National Daily, submitted by the Lewis Publishing Co. as evidence to sustain its claims, and for the facts and conclusions of the inspectors, I will state:

Inspectors J. D. Sullivan, W. T. Sullivan, W. L. Reld, and E. F. Martin were, upon receipt of instructions from the chief inspector to render you assistance, assigned on this investigation. During the course of the investigation some of the inspectors visited Union City, Mich.; Perry, Mich.; Youngstown, Ohio; Big Stone Gap, Va.; Casanova, Va.; Erie, Pa.; Rison, Ark.; Dunnegan, Mo., and Talequah, Krebs, and South McAlester, Ind. T. At each point a very

careful inquiry was made into the practice of agents of the Lewis Publishing Co. at such point, and also into the legitimacy of the subscription lists shown on the galley proofs of the Woman's National Daily addressed to the point. The facts obtained through the examination made by the clerks at your office have also been further developed and analyzed in the inspectors' investigation and report.

The developments reported by the inspectors are, in substance, as follows:

The Chicago Daily Review, whose subscription list was purchased by the Woman's National Daily, published on October 23, 1905, the date of the merger of the two publications in an editorial that, "The new paper (The Woman's National Daily), modeled along the lines of the Daily Review, starts off with a million subscribers."

The September (1906) number of the Woman's Farm Journal contains the statement, "Already our subscription list exceeds that of any daily newspaper in America if not in the world."

The October (1906) Woman's Magazine states, "The women of America have made possible the greatest accomplishment toward greater things in America of the present century—the publication of a daily newspaper with a million subscribers."

Under the above representations as to a million subscribers subscriptions and advertising were solicited, and 12,000 names of subscribers to the Chicago Daily Review were transferred to the subscription lists of the Woman's National Daily.

Had not the publication of the first issue of the Woman's National Daily been postponed from month to month since January 1, 1906, and had there not been a reiteration of this enormous claim since a year ago, it might be argued that the claim was made during one of Mr. Lewis's optimistic moments and before an opportunity had been afforded him to know what to reasonably expect. When, however, these representations are made as late as September and October, 1906, following the forced postponement of the first issue of the paper because of failure to obtain even one-tenth of a million subscriptions and at a time when Lewis knew that his subscriptions could not possibly reach the number claimed, these representations resolve themselves into nothing less than rank deceit and fraud.

On October 31, 1906, when it became necessary for Mr. Lewis to make his statement under oath on form 3501 (application for entry) he submits as his claimed subscriptions not the 1,000,000 claimed during the early part of the same month, but the number of 120,000. The examination of the clerks from your office shades this claim to 112,564, consisting of single cash subscriptions, 10,058; single credit subscriptions, 32,102; single three-month credit subscriptions, 12,012; agents' cash subscriptions, 6,652; agents' credit subscriptions, 36,149; savings bank club subscriptions, 1,840; Lewis 5 per cent trustee note subscriptions, 936; Chicago Daily Review subscriptions, 12,815.

A great majority of the above subscriptions are challenged as not being entitled to be classed as bona fide subscriptions.

The first-class, or single cash subscriptions, seem to be evidenced partly by slips or memoranda taken from letters bearing on other subjects, these slips being prepared under the supervision of W. E. Miller, assistant secretary, now under indictment with Lewis charged with defrauding the Government in connection with the illegal mailings of the Woman's Magazine and Woman's Farm Journal. While these slips may represent legitimate subscriptions, on the other hand they may represent a padded list. Nothing but a test by making inquiry of subscribers can tell, and the time for investigation is too limited for that. The table showing the subscriptions by months has doubtless been furnished you by your clerks.

Granting for argument that these subscriptions are all genuine, the table shows that during a period of 14 months only 9,461 people actually subscribed for the paper in compliance with paragraph 1, section 436, Postal Laws and Regulations, 1902, which defines bona fide subscriptions as "those who voluntarily seek and pay for it with their own money."

These single cash subscriptions with the possible exception of not more than an additional one thousand (1,000) each under classes 2, 5, and 6 of the Third Assistant Postmaster General's circular of December 16, 1905, are practically the only lists that come under any of the six classes mentioned in that circular that will, according to the rule therein, "be recognized as constituting actual subscriptions."

The second-class, or single credit subscriptions, numbering 32,102, are represented by some letters and postal cards, but are largely represented by coupons

1230 EXPENDITURES IN THE POST OFFICE DEPARTMENT.

taken from the various newspapers of the country, and especially from the Woman's Magazine and Woman's Farm Journal. The majority of them are on the following form and apparently signed by prospective subscribers:

"EDITOR OF THE WOMAN'S NATIONAL DAILY,

"*St. Louis, Mo.:*

"I hereby subscribe for the Woman's National Daily Newspaper for one year (313 issues), beginning with the first issue. I promise to pay to the Lewis Publishing Co., or order, the sum of \$1 for the first year's subscription, on demand, within one month after the beginning of the regular issue of the Woman's National Daily.

"(Signature) -----,

"(Street) -----,

"(Post office) -----,

"(State) -----.

"Date -----.

"Please sign your name and address fully."

The lists tendered by the publishers under this class are claimed to have been received as follows: May, 1,410; June, 4,128; July, 4,432; August 6,248; September, 6,218; October, 9,666; total, 32,102. It is noticed that no explanation is made of the fact that none of these subscriptions were received prior to May, 1906, although subscriptions of other classes came in as early as September, 1905. None of this class have paid. It is only conjecture how many will. There is no requirement to pay until "one month after the beginning of the first issue" of the daily. No daily has as yet been issued, nor is it known when it will be if at all. As a result, it is questionable if such a subscription binds the claimed subscriber either legally or morally. If it does not, the form which is intended as a promissory note becomes worthless as a financial obligation, and there is neither cash, valid note, or other asset to represent the payment for subscription as provided by the postal laws, thereby rendering these subscriptions illegitimate.

The third-class, or single three-month subscriptions, number 12,012, appear to have been received, 2,981 in September and 9,031 in October, 1906, and were virtually all sent in on coupons clipped from the Woman's Farm Journal and the Woman's Magazine, copy of which is below:

"WOMAN'S NATIONAL DAILY,

"*University City, St. Louis County, Mo.:*

"Enter my subscription for one year (313 issues at \$1 per year) to the Woman's National Daily. If at the end of 3 months (13 weeks) I do not want it longer I will send you 25 cents for the 78 issues I will have received, and direct you to stop the paper.

"-----,

"Sign your name and address plainly."

While the claimed subscriptions under this class may partly comply with the law as to form and method, yet the purpose and effect of these three-month trial subscriptions is to swell the subscription list in order to make certain the entry of the Woman's National Daily at the second-class rate of postage. The lack of date of the coupons and the failure of the publishers to print the publication as a daily renders them invalid as financial obligations. The effect of recognizing as bona fide subscriptions these alleged subscriptions, taken for a fractional part of the regular annual subscription price, would result in opening the door to great fraud on the revenues of the Government in that the effect would be the obtaining of an apparently bona fide subscription list for a fractional period covering the time for entry of the publication at second-class rates, then the dropping off of these subscriptions after entry and the use of the mails in circulating the publication primarily for advertising purposes. If the quarterly subscription is recognized, the same rule will admit of recognition of monthly subscriptions at 10 cents, or 15-day subscriptions at 5 cents. While these fractional subscriptions might be recognized in connection with established publications, having already been granted second-class privileges based on annual subscriptions, it surely is unsafe to recognize fractional subscriptions as a means of effecting the entry of a publication to second-class privileges, the entry of which can not be obtained through means of regular annual subscriptions.

The fourth class, or agents' cash subscriptions, numbering 6,652, have been sent in by agents, and, as a rule, paid for by the agent himself. They are gen-

erally entered by the agent on the green subscription blank. (Exhibit 1.) As a result there is nothing whatever from the subscriber to indicate his desire to take the paper, and he has paid no money and has given no obligation for payment of the subscription. The subscription is simply a voluntary act on the part of the agent, who is interested in sending in a large list to enable him to successfully compete in one of the \$1,000 prize classes, the effect of which is to artificially force a large circulation for advertising purposes.

The fifth class, or agents' credit subscriptions, amount to 36,149. These are shown by the inspectors' investigation not to be bona fide subscriptions in any sense of the word. They represent little more than a list of names sent in by the agents in the hope that many will subscribe within the prescribed time and thus assist the agent in winning a prize. The names, as a rule, were secured in the manner most convenient to the agent. Some were obtained on the streets, some at lodges, others at public gatherings, but the greater bulk of them from old voting and tax lists and rural-route lists. Many persons were not consulted, but if consulted were asked if their names could be sent in for a 30-day trial subscription, after which the party could subscribe and pay if the paper was satisfactory, and if not satisfactory he could have it discontinued at the end of the trial period. Many, of course, were advised that their cooperation might assist the agent in winning a \$1,000 prize. This would result in the consent of many friends to the agent to the use of their names. The agent almost universally filled in all names on the green blank form (Exhibit 1), the subscribers rarely signing same.

ILLEGITIMACY OF LISTS IN FIFTH CLASS.

The story as to how these lists were obtained is told in the affidavits of a few of the agents who sent in the larger lists, supplemented by the affidavits of some of the claimed subscribers.

William H. Vincent, of Union City, Mich., a town of about 1,500 inhabitants, sent in one of the largest lists, containing about 2,940 names. In his affidavit (copy herewith, marked "Exhibit 2") he states:

That not over 500 of the people whose names he sent in as subscribers were seen by him; that many of the names were secured from voters' rolls; that a lady at Coldwater, Mich., whose name he could not remember, sent him over 400 of the names he used; that none of the people signed any contract or agreement to subscribe; that it was understood the people were to subscribe within 30 days from receipt of first regular issue, provided they were satisfied with the paper at that time; that they were invariably given to understand that the paper would be sent on trial for 30 days; that only one of the 2,940 people paid any money, and in that case a lady at Coldwater, Mich., sent 10 cents for a 30-days' subscription; that all the names were sent in by Vincent, written by him on the green blank headed "No money required in advance" (Exhibit 1); that he wrote the publishing company about October 20 advising that his original list from Girard, Mich., was all wrong, but the company did not revise the list in any manner whatever. Mr. Vincent concludes his affidavit with this very significant statement: "I did not consider that any of the names sent in would be subscribers until they paid for it, and sent in the names so they could see the paper and be satisfied;" that it was with this understanding that these names were furnished is evidenced by the tenor of a circular sent out by Vincent; a copy is printed below:

"*Notice.*—All to whom I have handed or sent advance copies of the Woman's National Daily and all who have received circulars describing same will receive the paper for the first 30 days on trial free, beginning with the first regular issue, which will be November 1, 1906. But if you wish the daily continued for one year or more you must pay at the rate of \$1 per year inside of 30 days from the date of the first regular issue. Send or leave your name and post-office address to Wm. H. Vincent, Union City, Mich., agent, if you wish to accept the trial offer before November 1, for after the first regular issue there will be no trial offer, so be sure to send or leave your name before November 1 with _____."

While at Union City, Mich., in the investigation of this matter the inspector's attention was called to the fact that 9 people had just returned the Woman's National Daily to the postmaster, refusing same because they had not subscribed and did not want the paper. The postmaster also advised that the agent (Vincent) had not interviewed to exceed 50 people in Union City, and that he sent in such names as he could procure from any source.

There was found and sent to this office over 300 copies of the Woman's National Daily from the towns of Union City, Burlington, Tekonsha, Girard, and Homer, Mich., all of which had either been refused or unclaimed. The people to whom the papers were sent were on Vincent's list, and they are now being counted as "legitimate subscribers" by the Lewis Publishing Co.

The postmaster at Girard, Mich., made an affidavit under date of November 11, 1906, in which, among other things, he said (Exhibit No. 3 herewith):

"Copies of the Woman's National Daily, published at St. Louis, Mo., by the Lewis Publishing Co. (a big sack full), came to this office day before yesterday. I distributed a number of them to patrons of this office, but there were 80 copies, which I hand you, with list of names attached, which are not deliverable to patrons of this office."

Charles R. Crane, of Perry, Mich., a town of 772 inhabitants, sent in a list of 1,873 names. He states to Inspector W. T. Sullivan, November 13, 1906, in a written interview, which he afterwards refused to sign and swear to, not for the reason that the statement contained anything different from what he had said, but just "because he didn't care to sign it" (see Exhibit No. 4), that:

"He had been taking subscriptions to the Woman's National Daily for the past eight months; that he had sent in names from various towns in Michigan and 'a few in California'; that he sent in from Perry, Mich., between 250 and 400 names; that he offered three months' subscription for 25 cents; that he told the people the paper would come to them one month on trial; that all names sent in by him were bona fide subscribers, provided they liked the paper, and 'many said if they did not like the paper they would stop it, and that's all there is about it'; that he is cutting off of his list the dissatisfied ones as fast as possible; that some of the alleged subscribers demurred to signing the list (meaning the green subscription blank, Exhibit No. 1); that the people on his list who have since refused to take the paper have simply complied with the terms of the subscription to order the paper discontinued if they did not like it; that he did not consider any person a subscriber until he got the money in his hands; and that he might have sent in 20 names more or less of people whom he did not see."

The inspector notes that after refusing to sign the written statement Crane entered upon a tirade of abuse of the Postmaster General, the Assistant Attorney General, Judge McPherson, and the Federal court. He also said: "If I was to sign that statement and you would secure the sworn statement of those women who have refused it, that they refused to subscribe or that I did not ask them to subscribe, you would send me to the penitentiary."

While Crane refused to state the number of names sent in by him as "legitimate subscribers," it is a matter of record that his list contained 1,873 names, which the Lewis Publishing Co. turned over to the postmaster's investigating committee to be counted as bona fide subscribers, and which were not only counted as such, but the names were set in type and are now being carried as bona fide subscribers by the publishing company.

An investigation of Crane's list at Lansing, Mich., was made by the letter carriers of that city under the supervision of the postmaster, the result of which shows the following: Two hundred and seventy-six declared themselves not subscribers; 85 refused to accept the paper; 18 declared they had subscribed, some on trial, some free; 75 claimed to be receiving the paper on 30 days' trial; 38 claimed to have seen no agent, and did not know how the paper came; 3 claimed to have paid \$1 subscription.

In addition to the above the inspector personally interviewed quite a number of people whose names had been sent in by Crane, practically all of whom said they had not subscribed for the paper and did not want it. Many said they had not given their names to an agent for any purpose whatever and had not even been interviewed by an agent. Some said an agent had been to see them and promised to have the paper sent on 30 days' trial, advising that "they could subscribe for the paper after that time if they liked it."

It is not deemed necessary to repeat these statements one after another, as they all tell virtually the same story, but copies of a few of them are herewith inclosed under Exhibit No. 5, viz, Martha Kimball, Eunice Osborn, Mrs. A. E. Green, Mrs. Samuel Wright, and H. H. Hawley.

E. Prescott, Big Stone Gap, Va., sent in 3,137 names. In an affidavit made before Inspector J. D. Sullivan on the 19th instant (Exhibit No. 6), he states that he is a contestant for the \$1,000 prize in class 4; that he secured about 3,000 names with the aid of canvassers and personal friends, not more than six of the entire list having paid the annual subscription price of \$1; that no effort was made to collect, for the reason that the printed subscription form

sent to agents specified that 30 days would be given the subscriber after the first regular issue in which payment could be made.

The postmaster there reports that of the 232 names submitted by the publishers as subscribers at Big Stone Gap, Va., 33 were unknown, 20 had removed, 9 were refused, 4 were duplicates, 4 had no box on R. F. D. route, 2 were wrong names, 1 was a fugitive, and 1 dead.

Prescott employed a canvasser named Ed Stewart, of Cranesville, Pa., agreeing to pay 50 per cent commission on subscriptions obtained, provided he (Prescott) won the \$1,000 prize. Stewart canvassed at Erie, Girard, Albion, and other towns in northern Pennsylvania.

Personal investigation by the inspector developed that many cases where parties on mailing list had never been solicited, and other cases where parties who had refused to subscribe, received the paper notwithstanding. (See statements on next page.)

Under Exhibit No. 7 will be found a number of statements of alleged subscribers sent in by Prescott, which in substance are as follows:

Mrs. George Rockwell, of Girard, made affidavit that she was not a subscriber to the paper; that her subscription had not been solicited; and that she has not authorized anyone to send her the paper.

Mrs. Ernest Biegert, of Girard, made an affidavit practically the same as that made by Mrs. Rockwell. Mrs. Geo. E. Peabody and Mrs. Burdette Stillwell, also of Girard, made affidavits that they refused to subscribe for the paper, and that it was then sent them on trial.

Mrs. Ed Steiner, Mrs. George Mehler, Mrs. J. Ludwig, Mrs. S. R. Byron, and Mrs. F. R. Gill, of Erie, Pa., made affidavits that they refused to subscribe for the paper and that it was then sent them on trial. Other ladies at Erie made verbal statements to the effect that they were receiving the paper, although they had refused to subscribe for it.

Mr. P. Callaghan, of Albion, Pa., made affidavit that the solicitor requested her name so that he could send her the paper 30 days on trial for 25 cents, the same to be paid if the paper proved satisfactory.

Mrs. C. White, also of Albion, made affidavit that she refused to subscribe for the paper, although her name appears on the list of subscribers and the paper is supplied her.

Miss Gertrude Pratt, Mrs. S. M. White, Mrs. C. W. Metcalfe, and Mrs. Dr. Peters, all of Albion, receive the papers although not subscribers.

B. F. Oliver, of Casanova, Va., sent in 856 names, and states in an affidavit herewith marked "Exhibit No. 8:—"

"I am a solicitor for the Woman's National Daily, of St. Louis, also various other papers. I am a disabled member of the order of Brotherhood of Locomotive Engineers, and my soliciting of subscriptions for membership has been by correspondence. In soliciting for subscriptions to the Woman's National Daily I sent out a printed letter appealing to the order of which I am a member, the understanding being that unless the subscription price is paid at the end of 30 days the paper will be discontinued. On that representation I have obtained about 500 names of promised subscribers. I am paid a commission of 25 per cent on subscriptions collected. I am also a contestant for the extra commission of \$1,000 offered for villages of less than 500. Up to the present time I have collected about \$25, the greater part of which has been sent to the Woman's National Daily."

Oliver sent out a circular, an extract from which reads as follows:

"You do not have to pay for this magazine (Woman's National Daily) until you try it. Send me your order, to reach me by October 28. Better send it now, and on the 20th day after the first issue is received by you send me the price for a year—only \$1—if you wish it continued; but if you do not wish it continued please notify me and I will have it stopped, and what you have already received will not cost you anything. All orders from any of your friends on these conditions will be thankfully received. I am working for a cash prize, and any help you can give me will be greatly appreciated."

Frank L. Brown, Youngstown, Ohio, sent in 493 names. He states in Exhibit No. 9:

"That he commenced taking the subscriptions in March, 1906, in an effort to obtain a prize of \$1,000; that the publishing company recently wrote him advising that he was one of 10 leaders for the \$1,000 prize and to 'get a hustle on himself'; that he sent in 493 names; that 100 of the people paid, and that he sent the company \$40; that he told the people the paper would be sent on 30

days' trial, and if they did not like the paper at the end of 30 days' trial they could reject it; that there were about 40 or 50 persons whose names were sent in he did not see before sending in the lists, but that he has seen them since and they said it was all right; that some of the subscribers signed their own names in a little book he carried, and that he signed some of the names himself; that he would explain the matter, and most of them said to put the name down, and he did so; that none of them signed any agreement or contract to take the paper, and that most of the names sent in by him are those of men."

It transpires that Frank L. Brown is a former mayor of Youngstown, and no doubt has a large number of personal and political friends. It stands to reason that, when requested to do so, practically every man interviewed would consent to the use of his name for the purpose of assisting Brown in his effort to get the 25 per cent commission and win a \$1,000 prize. It is not unlikely that quite a number did pay him for the paper, but the paid subscriptions came from men who felt that they were simply contributing to the support of Brown. These are not legitimate subscriptions under the law, as they did not "voluntarily seek the paper." But be this as it may, correspondence with Brown's alleged list of subscribers to date shows 200 replies to the effect that the party addressed did not subscribe.

Robert F. McWherter, of Krebs, Ind. T., was an agent for the Woman's National Daily and a contestant for one of the \$1,000 prizes in class 5. He claims to have sent in 808 names, while the company receipted him for 817. While Mr. McWherter is unfriendly to this investigation, he made an affidavit under date of November 16, 1906, before the postmaster at South McAlester, Ind. T. (see Exhibit No. 10), in which the following points may be referred to:

"That the consent of all of the 808 persons whose names were sent in by him as subscribers were either obtained by him or by parties representing him; that none of the 808 persons have paid any part of their subscriptions as yet, and that he has collected no money whatever; that he don't know how many of the 808 persons signed the green subscription blanks (Exhibit 1), but thinks that two-thirds of them did; that he signed the names of all the 808 persons except those who signed for themselves; that he does not consider himself responsible for the subscriptions of the people whose names he signed to the green subscription blanks, yet he will do his utmost to collect for each and every one of them. McWherter attempts to create the impression that the names on the green subscription blanks were signed by the people themselves, but among the correspondence turned over by him is a list of subscribers on the green form, which he said the company had returned to him to be used in making his collections. The 20 names entered on this blank are all in the handwriting of Mr. McWherter."

Herbert C. Smith, deputy clerk of the United States court at Talequah, Ind. T., in conjunction with a subagent named Rev. J. W. Duckworth, acted as agent for the Woman's National Daily, and up to October 31, 1906, had sent in 763 names to the publishing company. Mr. Smith is very hostile to any investigation made of the business transactions of the Lewis Publishing Co., and refused to give the details of his canvass for subscriptions, but undertook to create the impression that all of the 763 names sent in by Rev. Duckworth and himself represented actual subscribers. However, he made a statement (Exhibit No. 11), from which we quote the following:

"We obtained these subscriptions in Muskogee, Fort Gibson, South McAlester, and Talequah, Ind. T. We received, or are to receive, a commission of 25 per cent on the regular subscription list price of \$1 per year, and in addition thereto we were competing for a special prize of \$1,000, to be given to the person sending in the most subscribers from towns of between 2,000 and 3,000 populations."

It is a safe conclusion that both Smith and Duckworth signed the names of the alleged subscribers on the green blank (Exhibit 1), just as the other agents did, and it is proven by affidavits below that the people were given to understand that the paper would be sent to them for 30 days' trial, after which time they could pay provided they liked the paper.

(Here follows several pages of affidavits and statements of persons whose names have been sent in as subscribers but who alleged that they did not subscribe, or that they subscribed under the 30-day trial plan, and of persons who have been acting as agents of the publisher in soliciting subscriptions.)

The illegitimacy of these agents' credit subscriptions is demonstrated by calling attention to the ban the Lewis Publishing Co. has itself placed on them. While the publishers have used every means to encourage the sending in of

large lists for the purpose of causing the Post Office Department to consider them as bona fide subscriptions in the application of second-class privileges, yet in their own circular letter (copy of which you have) which is sent to agents contesting for a prize, they rule that only such subscriptions as are actually paid by December 1 will be counted by the Lewis Publishing Co. in awarding the prizes.

On the agent's green form (Exhibit No. 1) appears the heading in large, bold type: "No money required in advance. Club department, Woman's National Daily, 313 issues of a daily newspaper for \$1.

"To the LEWIS PUBLISHING COMPANY, St. Louis, Mo.

"We, the undersigned, hereby subscribe for one year to the Woman's National Daily newspaper, &c."

Each form contains space for 20 names under heading "Subscriber's signature," but knowing that a great many more names could be secured if individuals were not required to sign their own names, the following footnote appears:

"*Important.*—Write names and addresses plainly and be careful not to omit any part of the address. Use each column for the purpose indicated by its heading. If no street or box number in the address, leave that column blank. By being careful and writing plainly you will avoid complaints and insure your subscribers getting their paper promptly and regularly."

Knowing that many more names would be sent in than would be paid for, a contestant to make the payment himself, Agent Chas. Jeorg, Brookfield, Ind., has stated that he intended, where subscribers failed, to make the payment himself in order to win the prize. His action is based upon the following footnote to agents on the green form above referred to:

"The above subscriptions are to be counted in awarding one of the extra commissions offered for the largest list of subscribers to the Woman's National Daily sent in by the day the first issue appears, only after I have collected for same and remitted to the Lewis Publishing Company the amount, less my commission."

In order to encourage more determined efforts by the agents a telegram was sent to each October 22, 1906, as follows:

"You are one of 10 leaders in your class for \$1,000 special prize. Only few days left, and hustling will bring results.

WOMAN'S NATIONAL DAILY."

Copies of telegrams received by Robert F. McWherter, agent, Krebs, Ind. T., and Wm. H. Vincent, Union City, Mich., are transmitted herewith as Exhibit No. 14.

While President Lewis, of the Woman's National Daily, counted all names sent in by these agents as bona fide subscribers, he knew they would not all pay, as shown by a circular letter sent to agents by him on November 1, 1906, in which only those paid for by December 1, 1906, are to be counted. The letter you already have, a part of, which is as follows:

"DEAR FRIEND: The great \$10,000 subscription contest closed at midnight November 1, all subscriptions mailed to us up to that hour counting in the contest.

"*Now comes the real test.*—It is not necessarily the one who sent the largest list of subscribers in each class who will win the \$1,000 extra commission by any manner of means, because only such subscriptions as have been collected for and remitted to us before December 1 count in the contest, and those having very much smaller lists may be successful in collecting a larger per cent of their subscriptions than those with larger lists. It is the one in each class who has to his credit the greatest number of paid-in-advance subscriptions by December 1 who will win the \$1,000 in that class.

"You are, of course, to retain 25 cents out of each dollar collected as your commission whether you win one of the extra prizes or not.

"Get a big hustle on yourself, as only 30 days remain, and on December 1 the \$10,000 will be awarded to the 10 agents who are successful in their classes. The largest list in your class is a comparatively small one, although a great many agents are competing, so you need not be discouraged if you have a small list, because you may be the successful one in remitting for the largest amount of subscriptions between now and December 1. Best wishes.

"Very truly, yours,

"LEWIS PUBLISHING COMPANY.

(The foregoing letter is signed by printed signature, "E. G. Lewis, president.")

Attention is invited to the fraud contained in the last paragraph of the letter quoted above, which is a general circular letter, sent to all agents irrespective of the class in which they are competing and the number of subscriptions which they have sent in.

It is safe to say that 95 per cent of all credit subscriptions will never be paid, and hence can not be considered bona fide subscribers for purpose of entry of the publication.

Class 6, or "savings bank club subscriptions." These number 1,840, and are essentially prize-subscriptions. They were secured under a clubbing arrangement whereby an "agent" sent in his own name and the name of one or two other persons accompanied by the cash. The first bank club proposition provided that the agent send in two other names with that of his own with \$3. He was then given one of the banks, for which \$1.50 was alleged to have been paid over to the stockholders of the defunct People's United States Bank. The other \$1.50 went to pay the subscriptions of the agent and the two other subscribers to the Woman's National Daily for one year. Later the bank club offer was changed to allow one of the banks as a premium for two cash subscribers, 50 cents being set aside for the subscriptions and the other dollar to Lewis to pay for the bank, the price of which had in the meantime been reduced from \$1.50 to \$1. Thus it will be seen that the publishers gave the banks, which are said to have cost less than \$1.50 each, as a premium with each subscription, and that, in addition, the agent was allowed to enter the subscriptions in his contest for the \$1,000 prize.

The above subscriptions should not have been counted, of course. Neither should they be considered as bona fide in Lewis's application for entry of the Woman's National Daily, as they were induced by extraneous considerations, and positively contrary to law, according to the amendment of the Third Assistant Postmaster General bearing date of December 16, 1905.

In addition to this, Lewis has made a false statement, contrary to law, on his application for entry, wherein he answers "none" to question B, paragraph b, on Form 3501 (application for entry).

Class 7, or "Lewis trustee note subscriptions." Payment for these subscriptions was made with E. G. Lewis's personal notes, which were originally exchanged for stock in the People's United States Bank, a defunct institution. These notes are not worth a cent, as Lewis does not own any property, and it is understood that he owes every one of the various schemes promoted by him. On such of these subscriptions as were sent in by agents a commission of 25 per cent was allowed, in addition to the right to share in the contest for prizes. It will be seen, therefore, that a bonus was really paid for these subscriptions.

Class 8, or "Unexpired subscriptions to the Chicago Daily Review." The fraud in this class of subscriptions is so palpable that comment would seem unnecessary, especially in view of the fact that the company has undoubtedly been using this list of names as a sample copy list in the mailing of its two other publications—the Woman's Magazine and the Woman's Farm Journal. This list of 12,815 names was purchased from the Woman's National Daily have simply paid the publishers of the Chicago Daily Review \$5,000 to dispose of the latter publication, and the Chicago Daily Review has defaulted on its contract with its subscribers, as none of them have received any publication for over a year. Lewis has been a party to this defalcation in failing to supply the purchased list of subscribers with a daily publication for the year for which they have paid. At this time the wrong done the Review subscribers could not be righted if there was a disposition on the part of the publishers to do so, as many of the number are doubtless dead, hundreds have moved away and could not now be found, and many more have so changed positions in life that they could get no value out of a newspaper.

According to a ruling of the department, in your hands, in case of a transfer of subscriptions from one paper to another, in order that the subscription so transferred may be lawful, the subscriber must first file his written assent to the transfer with the publisher who is to carry out the unexpired subscription contract.

The publishers of the Woman's National Daily have not complied with that ruling, and therefore this list of 12,815 alleged subscribers can not be considered legitimate.

LOTTERY FEATURE.

A feature apart from the matter of second-class privileges might be called to your attention; that is, the apparent lottery and fraud practiced by Lewis in

obtaining the "agents' credit subscriptions." The 10 prizes offered are divided into classes based on the size of the town from which the agent sends in his subscription list. On the face of the classification Lewis has adroitly eliminated to a great extent the lottery feature, but by rule 3 following the classification he injects it by practically removing the classification and permitting any agent to solicit from all over the world. The result is and has been that agents in towns of 500 inhabitants are sending in lists of three times the population of their towns, which, of course, were obtained from other territories. From this it will be seen that it is wholly lottery and chance with any person competing for the prize, for the reason that no agent can tell with whom he is competing. The territory is not limited, and the size of the town from which the agent registers has no bearing on the number of subscribers he may procure.

FRAUDULENT REPRESENTATIONS AS TO CIRCULATION.

Another feature in connection with the publication of this paper is the fraudulent representations referred to on page 2 of this letter, as to the subscriptions and circulation. Within a month of the publication of the first issue, at a time when Lewis knew that his subscription list was not one-tenth of a million subscribers, he by suggestions so worded as to make them as strong as a direct statement, claimed a million subscribers. While this is characteristic of Lewis's style of boasting and puffing, yet the purpose of it is to affect prospective subscribers, and especially prospective advertisers. It is nothing more than the rankest kind of deceit and fraud. Under ordinary conditions the practice of such deceit and fraud would have its effect in the consideration of his application for entry.

CONCLUSIONS.

Reviewing the evidence hereinbefore submitted, it should be said regarding the claimed subscription of 120,000:

First. That the single cash subscriptions, numbering 10,058, are conceded by the inspectors as coming within the pale of bona fide subscriptions.

Second. The agents' cash subscriptions, numbering 6,652, so far as they were subscribed and paid for for the benefit of the recipient of the paper, are also conceded to be bona fide.

All others, however, are seriously questioned, when considered in connection with the rules governing the admission of a second-class publication for entry, especially so in view of their proportion to the total list, which is about 85 per cent.

For instance, the single credit subscriptions, numbering 32,102, under the terms of the subscription and failure of the publication to issue a daily, are not represented by any payment or legal or moral obligation for the payment of subscription; hence, are mere trial subscriptions having no right to consideration as being bona fide.

The single three-month credit subscriptions, numbering 12,012, likewise are not represented by payment or obligation, and are mere trial subscriptions to even a greater extent. The effect of recognizing these factional yearly subscriptions of three months at 25 cents will lead finally to recognizing them for 15 days at 5 cents, and would result in great fraud on the revenues of the Government. These lists are really sample copy lists.

The agents' credit subscriptions, numbering 36,149, are shown to be very little more than lists obtained with the consent of the alleged subscriber as a 30-day trial subscription, or without the consent of the subscriber, and obtained largely from voting lists, tax lists, and rural-route lists. These have not the least form of legitimacy.

The savings bank club subscriptions, numbering 1,840, were mostly obtained in direct contravention of the Third Assistant Postmaster General's ruling of December 16, 1905, in that they were secured through inducements by promises of gifts to subscribers, one of the subscribers in each club generally being the recipient of a savings bank.

The Lewis trustee note subscriptions, numbering 936, are challenged on the ground of lack of value of these notes, rendering them other than valid payments for subscriptions.

The Chicago Daily Review subscriptions, numbering 12,815, were transferred from that paper without consent being obtained from the subscribers,

rendering them strictly illegitimate under the letter of the Third Assistant Postmaster General in your possession, dated June 30, 1904.

These challenged subscriptions number over 95,000, and it is safe to say that not 5 per cent of the persons represented by the names therein will become subscribers.

Conceding for the sake of argument that the "single cash" and the "agents' cash" subscriptions, amounting to 17,000, are bona fide, and adding the 5 per cent of the challenged subscriptions, it will be seen that the subscription list, placed at its highest possible figure, on October 31, 1906, was not above 22,000.

Under the ruling of the Third Assistant Postmaster General in his circular of December 16, 1905, that "manifestly, if the list of subscribers must be legitimate, it must be wholly so. It is not sufficient to have some percentage of the list composed of actual subscribers. The entire list must consist of actual subscribers." It follows that only about 20 per cent of the subscriptions to the Woman's National Daily being legitimate, it is far from "wholly" legitimate, and should not be accorded second-class privileges.

Very respectfully,

N. M. FULTON, *Inspector in Charge.*

[Memorandum.]

DECEMBER 4, 1906.

SUPERINTENDENT, DIVISION OF CLASSIFICATION.

Mr. BACON: I have gone over the papers in the Woman's National Daily case, have read the postmaster's report, the report of the inspectors, and also your report of November 28.

I find the report of the postmaster and that of the inspectors valueless except for their statements of fact. There is manifest in their reports too much of a disposition to hurry the department to an adverse decision. They undertake to perform the functions of the department and decide every question of law and fact. In most instances their conclusions are diametrically wrong, and the apparent hostility to the publisher makes it necessary, in fairness, to disregard everything except the naked facts.

Some time ago in going over the case of the Woman's Magazine and the Woman's Farm Journal, published by the same company, Postmaster General Cortelyou stated to me that he desired every consideration of fairness shown the publisher, and to be especially careful to deal with them so justly in the application of the rules that it can not hereafter be said that the department had singled him out in any way for special treatment or treatment otherwise than would be accorded any publisher under the same state of facts, and in all cases of doubt to give the publisher the benefit thereof. Yesterday in talking with the Postmaster General concerning the Woman's National Daily case he repeated his desire for a treatment thereof that would place it beyond the power of any person to justly criticize the department when the facts are known. There may, however, be unjust criticism, which, of course, we can not help.

In the first place, the Woman's National Daily, volume 1, dated November 1, 1906, and submitted through the postmaster, fairly meets the requirements of the law in being a "newspaper." The question of entry, therefore, or denial of entry, rests upon whether or not the publication has a legitimate list of subscribers and whether or not it falls within the prohibitory clause against publications "designed primarily for advertising purposes or for free circulation or for circulation at nominal rates." The subscription price of the publication is \$1 per annum, and the publisher proposes to furnish 313 issues for that price.

The publisher claims 120,000 subscribers. According to the postmaster's report and the report of the inspectors only, approximately 10,000 can be considered as actual subscriptions. According to your calculations there are 63,000 which are acceptable; that is to say, that the objections raised by the postmaster and the inspectors to them are not sufficient under the practices to warrant rejecting any of that number. You approve items 1, 2, 3, 4, 6, 7, and 9 and raise doubt only as to items 5 and 8.

I have read the Inspector's report and the postmaster's report. Item 1 they accept substantially. That is to say, both the postmaster and the inspectors

think that it is not above suspicion; that it may turn out some other way, and they grant it only "for the sake of argument." Your review of this item also passes it favorably to the publisher.

Item 2 you also pass, and I approve. Of course, it is as Inspector Fulton says, "only a conjecture how many will pay," but that is always true of credit subscriptions. There is no reason why they should not pay in the Lewis case as good a proportion as they do in any other. The inspector's argument as to the law or morality involved are entirely gratuitous, and it ought to have been left out.

Item 3 you approve, and I likewise approve. The inspector's report on this item is like the previous one, an argument against allowing it, but if we were to disallow them in this case we have been unjust in thousands of others that have gone before where trial subscriptions for short periods are taken. Some of the argument of the inspector might be valuable in case the subscription did not cover before issuance in the year which the law requires, but in this case it is a daily paper and covers one-fourth of the 313 issues.

You approve Item 4, and I concur, but as to this Inspector Fulton says that they were "paid for by the agent himself." The report of the representatives of the postmaster do not so state, and on the blank Exhibit C I find that each subscriber's signature is placed under these words. "We, the undersigned, hereby subscribe for one year to the Woman's National Daily newspaper to be published by you, and hereby agree to pay on demand the sum of \$1 each for said subscription within 30 days after the beginning of the regular publication of the said daily newspaper."

We have nothing to refute the genuineness of these signatures save the bare statement of the inspector. It would be an astounding administrative move to accept such a sweeping statement as a basis for discrediting the bona fides of these signatures. The inspector says that there is nothing whatever from the subscriber himself to indicate his desire to take the paper, which seems to be in keeping with the tenor of the whole report to hurry the department to an adverse decision.

As to Item 5, there is some real ground for rejecting them, and I so decide. It appears that this vast number of names have been sent in by persons who were competing for cash prizes, and in their zeal they sent in great numbers of names without consulting the parties themselves. These should be disallowed until the publisher can prove that they are subscribers.

As to Item 6, you approve and I concur, but I am not entirely sure of the righteousness of my decision. But, as in other cases, you may give the publisher the benefit of the doubt. Certainly some of the subscriptions are beyond question as to their actuality while others might fall in or out of the rules laid down in Circular 25.

As to Item 7, you approve and I concur. There are but a small number of these, 900 or over, and they have been paid for by notes of the publisher, outstanding against him, and of course are regarded as equivalent of cash by those holding them. I see nothing wrong in the transaction.

As to Item 8, it is made up of 12,815 subscriptions to the defunct Chicago Daily Review. It appears that the Lewis Publishing Co. bought the Chicago Daily Review Co. and paid \$5,000 for the property, including the subscription list. Notice was given by the Chicago Daily Review Co. and by the Lewis Publishing Co. to all of the subscribers that in lieu of the Chicago Daily Review the Woman's National Daily would be supplied. This is another very doubtful condition. Much depends upon the actual circumstances. If the publisher of the Chicago Daily Review, finding he could not go on and keep his subscription contracts, sought to sell his institution to a going concern, or one assumed to be going, which could fill out his subscriptions and take over his property would be one phase of it; on the other hand, if the Lewis Publishing Co. in seeking to secure a list had purchased the list of the Chicago Daily Review, it would put an entirely different face upon the matter. In view of the notices sent out by both publishers and the fact that wherever dissatisfaction had been expressed by the subscriber the money for the subscription has been refunded, I think it entirely fair to give the publisher the benefit of the doubt. The failure on the part of the subscribers to respond is equivalent to an assent to accept the Woman's National Daily in lieu of the Review, and it is to be understood that the Chicago Daily Review was not, from all the evidence, a defunct publication at the time it was purchased by Lewis and that it was then anticipated by the Lewis Publishing Co. that within a very

short time the National Daily would be issued in lieu thereof. The delays are incident to the task of establishing a new enterprise.

I have weighed all these matters and have given the publisher the benefit of the doubt wherever it seemed proper to do so. The appointment of the commission by Congress to consider the whole subject of the second-class mail matter, together with the Postmaster General's instructions, are considerations which move me to direct that a tentative admission be issued authorizing the publisher to mail publications at second-class rates without deciding at this time whether the list of subscribers is legitimate or whether the publication comes within the prohibitory clause of the statute.

Item 5, "agents' credit subscriptions," \$6,149, I shall disallow until the publisher can establish that they are actually subscriptions, which he is to be given an opportunity to do.

As I see it, we must hold the publisher responsible for the reckless acts of his agents. It appears that these agents got so beyond the control of the publisher and acted so much without his knowledge that it would be a hardship to rule positively against them without giving him a chance. You will, therefore, direct the postmaster to hold a deposit at the transient second-class rate on the \$6,149 and as many more as are received under that plan of the publisher, refunding to him, however, all in excess of the pound rate as fast as he establishes that they are actual subscribers.

Take action on the matter promptly.

EDWIN C. MADDEN.

I will say that the result of the action of the Third Assistant Postmaster General was to admit the Woman's National Daily conditionally. There was one feature of the subscription list that was objectionable; we were not satisfied upon it, and the publisher was given some period of time in which to make good on it. During that period of time he was required to deposit a higher rate upon the copies mailed in fulfillment of that particular class of subscriptions which we could not approve. I am lost on the further results of that matter.

Now, it has been complained here that the department, in the Woman's National Weekly case, has been overindustrious in the making of investigations and circularizing the country, as it was in the case of the Woman's Magazine and the Woman's Farm Journal.

MR. AUSTIN. How many times did they really send out these circulars?

MR. MADDEN. I think they have track of at least 70 different forms or circulars sent out at different times.

MR. AUSTIN. Seventy different times?

MR. MADDEN. Yes, sir.

MR. AUSTIN. How many times did they go through the publishing company's offices in St. Louis?

MR. MADDEN. The inspectors?

MR. AUSTIN. Yes.

MR. MADDEN. I think, in all, something about a dozen times. I am not sure as to the number of times. They were at it for two years, and then in August following my retirement they began again.

I submit, and desire to read, an affidavit of the manager of circulation at the time that investigation was made.

MR. MCCOY. Which case does this relate to?

MR. AUSTIN. This is the Woman's National Daily case. I desire to make a further explanation here. So far as I have charged conspiracy in this case I do not include the present Postmaster General or the present Third Assistant. It is those who were in office prior to my leaving it. I do think, however, that their conduct in this case

is extraordinary. Perhaps it might be explained, but I do not think so; but from all that has gone before the committee can draw its own conclusions from the facts as they are presented.

Mr. BRITT. Mr. Chairman, just one word in the interest of the record here. The latest official action in this matter was by myself, and, as I have already indicated, I intend to go on the stand, under oath, and explain all the facts in relation to it. Therefore, I shall not interrupt Mr. Madden during this statement at any time, with this single reservation, that if he should make a statement which I can not understand, for my own benefit in making a proper response, I want to make an inquiry as to the meaning of that particular statement. Otherwise, I shall not controvert anything stated by him or make any interruptions at this time.

Mr. MADDEN. I have no particular statement to make in this case, except to read papers, affidavits, letters, and so forth, concerning the conduct of the Post Office Department recently.

Mr. ALEXANDER. That relates to the Woman's National Daily?

Mr. MADDEN. The Daily case; yes. It was subsequently reduced to a weekly, due to the stress of the circumstances of the company.

(The affidavit referred to is as follows:)

EXHIBIT No. 47.

STATE OF MISSOURI, *City of St. Louis, ss:*

Walter Ross McKnight, being of lawful age, deposes and on affirmation says: That he was, during the year 1907 and for at least a year thereafter, circulation manager of the Lewis Publishing Company; that the Lewis Publishing Company was during the period aforesaid publisher of the Woman's Magazine, Woman's Farm Journal, and the Woman's National Daily; that in his official capacity he had charge of the subscription books, files, and accounts of the aforesaid publications; that subscriptions to the aforesaid publications were received direct from individuals and through field agents, who solicited subscriptions for the company and who at irregular intervals sent in lists of those secured; that the business of the Lewis Publishing Company and its method of securing subscriptions were similar to those in general employed by publishers; that the subscription lists of the Lewis Publishing Company were extraordinarily large, and for the three publications named considerably over a million; that to expedite business the subscription lists were kept on what is known as the "card system," which means a separate card is made out for each individual subscriber; that each separate card showed the name and address of the subscriber, date of the original subscription, the period for which it ran, and renewals of the same subscription, and the periods for which such renewals ran; that on or about August 12th, 1907, a number of postal officials appeared at the office of the Lewis Publishing Company and announced their purpose to investigate the subscription books and files of the Woman's National Daily; that the said officials took possession, not only of the original written orders, but of the card lists of the Woman's National Daily and other evidences of subscription; that they retained the foregoing records for a period of about sixty days, during which a force of about thirty post-office officials worked upon them; that the company sought to have a representative present at the investigation, tabulation, etc., of the subscription files and records of the Woman's National Daily, but this the postal officials refused; that the post officials were advised that the taking into their possession and out of the daily use of the company of its subscription records would seriously interfere with its business and greatly embarrass it; that during the time the aforesaid officials had the files of the Woman's National Daily in their possession it was necessary for the company to devise a new temporary list and books, at great expense to it and great embarrassment to its business; that this was made necessary not only to keep track of new subscriptions which came in, but because it was impossible to know whether such new subscriptions received were entirely new or renewals of previous ones, when the subscriber did not so state; that during the time the aforesaid officials retained possession of the cards and records of the Woman's

National Daily about thirty thousand of its approximately two hundred thousand subscriptions expired; that because of the lack of knowledge of exactly which subscription had so expired, its records being out of its possession, the company was obliged to continue sending out copies daily on that number of expired subscriptions, in all for the two months between one million and one million five hundred thousand copies, to its great expense for paper, printing, labor, and postage; that when the subscription files and records of the Woman's National Daily were released to the company they were in such a state of disorder that it required a full two months to adjust them to the state of order, in which they were given up and which was necessary to enable the company to transact its business properly and with business-like expedition; that when the aforesaid postal officials completed their work upon the subscription list of the Woman's National Daily they demanded and took possession of the subscription lists of the Woman's Magazine and the Woman's Farm Journal and conducted a similar investigation into them, which investigation occupied approximately four or five weeks; that both of the aforesaid investigations greatly embarrassed, obstructed, and hindered the company's business and subjected it to great expense, especially with regard to the management, issuance, and mailing to its patrons of copies of its several publications.

WALTER ROSS MCKNIGHT.

Subscribed and sworn to before me, a notary public, in and for the city of St. Louis, State of Missouri, this 7th day of July, 1911.

[SEAL.]

RALPH D. KAUFMAN, *Notary Public*.

My commission expires Dec. 14, 1914.

Mr. AUSTIN. Who drew that affidavit?

Mr. MADDEN. I did, sir, after consultation with Mr. McKnight in ascertaining the facts.

Mr. AUSTIN. Did the notary inquire into Mr. McKnight's standing and credibility?

Mr. MADDEN. No; not more than is necessary in taking an affidavit.

Mr. AUSTIN. You are complaining about that examination of the records and so forth, and interfering with their business. Is it not a fact that Mr. Lewis agreed and consented to that?

Mr. MADDEN. I think I have the record in that case. Yes. He was out of the city at the time. The inspectors appeared, and the officials in charge earnestly sought to have a representative present. Mr. Getty, the officer in charge of the investigation, said his orders from Washington were that no representative should be present.

Mr. AUSTIN. But Mr. Lewis agreed to this?

Mr. MADDEN. Yes; he did.

Mr. AUSTIN. Then why do you make complaint of it?

Mr. MADDEN. Because of the conduct. I think the affidavit speaks for itself in that regard.

Mr. AUSTIN. Here is the manager or head of this publishing company agreeing to it and here is a subordinate or clerk complaining about this examination, after Mr. Lewis himself had agreed to it.

Mr. MADDEN. Mr. Lewis himself, as president of the company, paid very little attention to those things.

Mr. AUSTIN. You just said he did agree to it.

Mr. MADDEN. He did agree to it. He was out of the city at the time, and they secured from him, by long-distance telephone or telegraph—I do not know which—consent to let the officials go ahead.

Mr. BRITT. What was the date of that examination?

Mr. MADDEN. It began on August 12, 1907.

Mr. MCCOY. Was there any reason why the Government officials should not have worked nights on that work and have allowed the ordinary business to go on?

Mr. MADDEN. I do not know of any, sir.

May I put in a statement here in answer to Mr. Austin? I know that Mr. Lewis consented to the investigation, but I want to emphatically state that I know he did not consent to the manner in which it was conducted nor did he consent to the disorganization of his records and the retention of them for such a long time. I know that.

Mr. McCoy. Can you have this affiant as a witness in this matter?

Mr. MADDEN. Yes, sir. He is not in the employ of the company and has not been for a long time.

Mr. McCoy. Will you do that? I would like to ask him further about it.

Mr. AUSTIN. If Mr. Lewis gave his consent to this examination, I think he is estopped now from complaining about the investigation that was made in pursuance to his agreement or consent.

Mr. MADDEN. This is such an important matter that I have another affidavit on the same subject, which I will submit without reading. It is to the same effect—as to the disorganization of the files. That is all.

Mr. AUSTIN. Give me the position that that man occupied.

Mr. MADDEN. This man is assistant circulation manager and now in the employ of the company. I will submit the affidavit of Ray U. Myers to appear in the record at this point.

(The affidavit referred to is as follows:)

EXHIBIT No. 48.

STATE OF MISSOURI, *County of St. Louis, ss:*

Ray U. Myers, being of lawful age, deposes and under oath says that he was during the year 1907 and for some time previous assistant circulation manager of the Lewis Publishing Company; that as such he worked upon and had charge of the subscription files and books of the Woman's National Daily, published by the Lewis Publishing Company; that he had knowledge of the company's business system, and the order in which the files and books were kept; that in the summer of the year 1907, the exact date unknown to him, about thirty postal officials, their names unknown to him, appeared at the company's offices and demanded for the purposes of an investigation the company's subscription cards, lists, and books; that the said postal officials retained possession of the cards, lists, and books for a period of about sixty days; that during that time neither he nor the employees under him nor the officers of the company were permitted to have access to the cards, lists, and books; that during that time it was necessary to make a new and temporary set of cards, lists, and books in order to transact the company's daily business; that this greatly disorganized the company's business; that when the permanent records were returned by the postal officials to the possession of the company they were in great disorder and confusion; that it required the whole force of clerks in the subscription department an entire month to adjust the temporary list, which had been made, with the permanent list, and about three months in all to restore to proper order the confused cards, lists, and books, so that the company's business might be transacted with the usual businesslike expedition; that all this occasioned great expense and disturbance to the company's business in dealing with the public.

RAY U. MYERS.

Subscribed and sworn to before me this 8th day of June, 1911.

[SEAL.]

JOHN W. LEWIS,
Notary Public.

My commission expires November 23rd, 1914.

Mr. AUSTIN. That affidavit, you said, was prepared by you, too?

Mr. MADDEN. Yes.

Mr. AUSTIN. Were all of these affidavits prepared by you?

Mr. MADDEN. No, sir; not all of these affidavits. I want to correct that emphatically.

Mr. AUSTIN. Well, those two were?

Mr. MADDEN. Yes.

Now, in order that you may have one which I did not prepare in this case—

Mr. AUSTIN. Who did prepare that?

Mr. MADDEN. Apparently this was prepared by D. Cohen, notary public, as near as I know. It is made by one C. J. Bertsch. It has been charged and complained of in this case that the conduct of the postal officials was unusual and extraordinary, and they sought to secure complaints of dissatisfaction and all manner of objections to the company's business. This is an affidavit on that subject, and covers considerably more than the Lewis Publishing Co.; but I submit it only in its relation to the Lewis Publishing Co.'s business.

The affidavit referred to is as follows:

EXHIBIT No. 49.

STATE OF MISSOURI, *County of St. Louis, ss:*

I, J. C. Bertsch, of Parsons, Kansas, being duly sworn, do depose and say that a party who represented himself to be a post-office inspector from the St. Louis district, who gave the name of J. S. Blough, called on me on or about the 26th day of May. He said that he was a post-office inspector and that he was getting complaints against the Lewis enterprises, principally against E. G. Lewis. He prevailed on me to make a complaint against the said Lewis and asked me at least three (3) times if I had a complaint to make. After some conversation in regard to the status of the note I asked him if he could recommend an attorney; he gave me the name of Claud D. Hall, of Saint Louis, and recommended him as a good attorney, who would look after my interests. He stated that Hall had some claims against Lewis to adjust.

(Signed) J. C. BERTSCH.

Subscribed and sworn to before me this 6th day of June, 1911.

(Signed) D. COHEN,

Notary Public for the County of Saint Louis, Mo.

My commission expires March 21st, 1915.

This is to certify that the foregoing is a true copy of an affidavit made before me by J. C. Bertsch, of Parsons, Kans., on June 6th, 1911.

[SEAL.]

D. COHEN,

Notary Public for County of St. Louis, State of Missouri.

That is not the original affidavit, but a certified copy. This should be followed by an explanation that the campaign of the officials has reduced the so-called Lewis enterprises to such a state that some time ago a plan was devised to save them, if possible, and to eliminate the personality of E. G. Lewis as much as possible, because, in Mr. Lewis's conception, it was him they were after, and not so much the enterprises, but anything he was connected with. Some 108 separate publishers throughout the country selected a committee and sent the committee to St. Louis to go over the books and papers of the institutions there, and the result of that was that that committee was to take charge of all the Lewis properties, institutions, etc., of every kind and nature, and Lewis was to withdraw fully for five years, except to retain his position as organizer in the American Woman's League and to receive some compensation in that connection. This organization plan was published on April 12, 1911. This affidavit goes to show that the post-office inspectors were encouraging

people on the outside to endeavor to turn the business into the hands of one Claud D. Hall and apply for a receiver, and in that way defeat the organization plan.

Mr. MADDEN. I have another affidavit which I have just thought of. It reached me in the mails, and I would like to present it. This was not drawn by me.

(The affidavit referred to is as follows:)

EXHIBIT No. 50.

STATE OF MISSOURI, *City of St. Louis, ss:*

Cyrus Bucher, being duly sworn, deposes and says: I am a resident of the city of Astoria, State of Illinois, and on the 15th day of May, 1911, William Harper, a post-office inspector, called on me at my residence. I had never made any complaints to the Post Office Department or invited the assistance of that department to look after my investments in the Lewis companies. Mr. Harper said he came from Arkansas especially to see me and other investors of the Lewis companies. I told him I held \$11,000 of notes of the University Heights Realty and Development Company. Mr. Harper took one of the notes for one thousand dollars of the University Heights Realty and Development Company belonging to me for the purpose of bringing it to St. Louis, Mo., for the inspection of Mr. J. S. Swenson, post-office inspector at St. Louis, Mo. Mr. Harper told me it was a good thing I did not turn my notes over to the reorganization, and said that it was about the only security issued by the Lewis interests that had any value.

The following day I and my son, S. G. Bucher, called at the office of Mr. J. S. Swenson in the United States post-office building in St. Louis and met there Mr. Swenson and Mr. Harper. Mr. Swenson told me that it was a good thing I did not turn my notes over to the reorganization, and said a suit for a receivership of the property covered by my notes was then being heard in the United States circuit court, and offered to take me there. After the hearing in the United States court was concluded he escorted me and my son to the Central National Bank Building, where he said Claud D. Hall's office was located, and went with us to the elevator and directed us to the office of Claud D. Hall, who, he said, was representing the other creditors. He said he did not want anyone to know he was along with us when we went to Mr. Hall's office.

From my conversation with Mr. Swenson and Mr. Harper I was led to believe that I could best protect my interest by placing my notes in the hands of Mr. Hall and that my interests would not be properly protected by depositing them under the reorganization agreement.

Some time that afternoon I turned over to Mr. Hall my notes of the University Heights Realty and Development Company and he made me a party to the suit. Since that time I have made an investigation into the reorganization and have taken the necessary steps to withdraw from the suit and to cooperate with the reorganization by depositing my notes with them..

CYRUS BUCHER.

Subscribed and sworn to before me this 10th day of July, 1911.

[SEAL.]

OLIVER D. WERTHERN,
Notary Public.

My commission as a notary public expires Aug. 4th, 1914.

Eugene H. Angert, being duly sworn, states that he is an attorney at law, with offices at 918 Third National Bank Building, St. Louis, Mo., and that the original affidavit, of which the foregoing is a correct copy, is in his possession.

EUGENE H. ANGERT.

Subscribed and sworn to before me this 11th day of July, 1911.

[SEAL.]

FRED L. ENGLISH,
Notary Public.

My commission expires Sept. 9, 1914.

Mr. MADDEN. Unusual and extraordinary methods have been employed by the department from the beginning of this campaign in 1905 even to the present time.

Mr. AUSTIN. That is often necessary, is it not, in cases?

Mr. MADDEN. Yes; in good faith.

Mr. AUSTIN. Yes.

Mr. MADDEN. I have an affidavit here of John W. Baker, which I wish to place in the record.

(The affidavit referred to is as follows:)

EXHIBIT No. 51.

COUNTY OF ST. LOUIS, *State of Missouri*, ss:

John W. Baker, being of lawful age, deposes and on oath says that he is now and has been since February 1st, 1911, manager of the circulation department of the Woman's National Weekly and manager of the correspondence department of the American Woman's League; that he knows that during the time he has filled the aforesaid positions thousands of letters have been received from persons who claim they had received no reply to letters sent by them to the Woman's National Weekly and on the business thereof and to the American Woman's League and on the business thereof; that he knows that responses were made in due course to said letters in the first instance by the persons in charge of the correspondence of the Woman's National Weekly and the American Woman's League; that this was evidenced by the papers and copies of letters in files; that this investigation showed the nonreceipt of the letters which had been sent out to the complaining persons in the first instance was due to fault or design of persons in the mail service, not to neglect in either of the departments in his charge; that to his knowledge thousands of complaints have been received from persons who were and many of whom still are subscribers to the Woman's National Weekly, complaining of the nonreceipt of copies for which they had subscribed; that his investigation showed the names of the said parties to be on the mailing list, and that copies were sent out in the regular order and in the manner in which all copies for subscribers were and are sent out; that to his knowledge the circumstances recited greatly harassed and embarrassed the business of the Lewis Publishing Company and the American Woman's League and the existence and prosperity of both, which depends upon reliable, faithful, and efficient mail service.

JOHN W. BAKER.

Subscribed and sworn to before me, a notary public in and for the county of St. Louis, State of Missouri, this thirtieth day of June, 1911.

[SEAL.]

D. COHEN,

Notary Public, St. Louis County, Missouri.

My commission expires March 21st, 1915.

Mr. AUSTIN. What is Mr. Baker's position?

Mr. MADDEN. He states in the affidavit that he is manager of the circulation department of the Woman's National Weekly and manager of the correspondence department of the American Woman's League.

Mr. AUSTIN. Did you draw that affidavit?

Mr. MADDEN. I consulted him and then drew the affidavit; yes, sir.

Mr. AUSTIN. Did you read it over to him after you had prepared it?

Mr. MADDEN. Yes, sir.

Mr. AUSTIN. Before he signed it?

Mr. MADDEN. Yes, sir.

Mr. AUSTIN. Have you got the affidavits of the parties who wrote these letters?

Mr. MADDEN. No, sir; how could we do such a thing? It would cost \$1,000,000 to trace this thing down through the country. What an absurd thing!

Mr. AUSTIN. You are seeking to prove here, on evidence of that kind, that thousands of these letters were never delivered.

Mr. MADDEN. Yes.

Mr. AUSTIN. Do you want us to believe a statement of that kind, without any proof, that the letters were mailed or written?

Mr. MADDEN. His oath is that they were written and sent out.

I would like to submit another affidavit, Mr. Chairman. This is another one which I did not draw. This is the affidavit of Mrs. M. E. Litten.

(The affidavit referred to is as follows:)

EXHIBIT 52.

STATE OF OKLAHOMA, *County of Pittsburg, ss:*

Mrs. M. E. Litten, of lawful age, first being duly sworn, upon her oath deposes and says:

My name is Mrs. M. E. Litten, and I reside in the town of McAlester, in that part known as North McAlester, State of Oklahoma. I am a subscriber to the Woman's National Daily, a daily newspaper published by the Lewis Publishing Co., of St. Louis, Mo.

I have made a statement heretofore relative to the manner in which I have received my paper. In addition to that statement and supplemental to it, I remember on one occasion that I went to the post office at North McAlester and asked for my paper and was told by the postmaster that it was not coming. I replied to him that I knew that it was coming regularly, for I had seen a number of papers with my name and address plainly stamped thereon. In reply to this he said that the papers that I had seen had come in late and he did not suppose that I wanted them, and remarked further that the paper was nothing but a little old trashy, worthless thing designed to get the people's money for nothing. This is about the conversation, as near as I can remember it.

Mrs. M. E. LITTEN.

Subscribed and sworn to before me this 30th day of June, 1908.

[SEAL.]

M. A. DRAPER,
Notary Public.

My commission expires August 1, 1909.

Mr. AUSTIN. Have you the affidavits of any of these people that never heard from the letters that were mailed out to them?

Mr. MADDEN. No; I have not any of them.

Mr. AUSTIN. As there are so many of them, I suppose it would be an easy matter to get some of them.

Mr. MADDEN. Well, you never were a publisher.

Mr. AUSTIN. Yes; I have been.

Mr. MADDEN. Then, if you were, you never had very much experience.

Mr. AUSTIN. I ran a daily paper; that is all.

Mr. MADDEN. Then, your circulation was largely around you. This circulation is all over the country. We claim there is not a town of 500 inhabitants in the United States where you will not find one or more subscribers to one of the Lewis magazines or dailies.

Mr. AUSTIN. This affidavit that you drew states that there are thousands of these letters that are not received, and I ask you if you can furnish me the affidavit of a single one of these people?

Mr. MADDEN. No, sir; I do not now any one of them. I took his statement.

Mr. AUSTIN. You have worked up a good deal of stuff there.

Mr. MADDEN. No; I could not travel all over the country in an effort to reach any of these persons.

Mr. AUSTIN. Have you any of the letters to the company?

Mr. MADDEN. Yes; they are in the files.

Mr. AUSTIN. Are you going to submit them?

Mr. MADDEN. We understood that you are going to send this committee out there to put this man on the stand.

Mr. AUSTIN. I asked you to see the letters.

Mr. MADDEN. Well, he will produce the letters.

Mr. AUSTIN. That is all right.

Mr. MADDEN. I asked him to be careful of his statements, so that he would be able to back them up when the committee came out there.

Mr. AUSTIN. That is a pretty general statement—thousands of letters.

Mr. MADDEN. Yes; that is what he said.

Mr. AUSTIN. And I would like something besides the broad statement. There may be 10,000 or 20,000 or 50,000.

Mr. MADDEN. Right here in this affidavit is some evidence on the line you have been talking about. This is an affidavit which I did not draw.

Mr. AUSTIN. We are glad to hear it.

Mr. MADDEN. This is the affidavit of Mrs. C. E. Powers, which I would like to go into the record.

(The affidavit referred to is as follows:)

EXHIBIT 53.

STATE OF OKLAHOMA, *County of Pittsburg, ss:*

Mrs. C. E. Powers, of legal age, being duly sworn, on her oath deposes as follows:

I reside in the town of North McAlester, State of Oklahoma. On or about November 1, A. D. 1906, I subscribed to and paid for one year's subscription to the Woman's National Daily, a daily newspaper published by the Lewis Publishing Co., of St. Louis, Mo.; subsequent to said date of subscription I did not receive said daily newspaper, subscribed for as aforesaid, regularly during a period of several months, and during said period of several months subsequent to date of said subscription the delivery of said Woman's National Daily to me was irregular, in that I did not receive it at intervals of days or more during the said time referred to. During a period of six months, subsequent to November 1, 1906, I received in all about one-half dozen copies of said daily newspaper. Subsequent to said date I wrote to the Lewis Publishing Co., of St. Louis, Mo., publishers of said Woman's National Daily, with regard to said irregularity with which said newspaper was delivered to me from the United States post office of North McAlester, aforesaid, and received from said publishers a reply to the effect that the said daily paper had been regularly addressed and mailed to me from said date of subscription, and that said publishers would begin anew my subscription from the date of their letter, which was on or about May 1, 1907. Since the last-mentioned date I received but two copies of said daily newspaper; to my personal knowledge subscribers of said daily newspaper in said North McAlester, Okla., are not receiving their paper, and to my personal knowledge said papers are not delivered to them, but have been disposed of as old papers "refused," and come into the possession of parties in North McAlester, aforesaid, other than the persons to whom said paper or papers were addressed. I myself have obtained copies of said daily newspaper plainly addressed to me under the terms of my subscription aforesaid, from a salesman who delivered to me purchases of bread wrapped in such copies, stating to me that he obtained such copies from the United States post office of North McAlester, Okla.

Further deponent saith not.

Mrs. C. E. POWERS.

Subscribed and sworn to before me this 30th day of June, 1908.

[SEAL.]

M. A. DRAPEL,
Notary Public within and for the
County of Pittsburg,
State of Oklahoma.

My term expires August 1, 1909.

Mr. AUSTIN. Was that complaint filed with the department for investigation?

Mr. MADDEN. No, sir; it was no use to file complaints with the department.

Mr. AUSTIN. Is that so?

Mr. MADDEN. That is so.

Mr. BRITT. What is the date of that, Mr. Madden?

Mr. MADDEN. The 30th of June, 1908.

Mr. AUSTIN. The Post Office Department investigates complaints down in my country.

Mr. MADDEN. Well, I have not any doubt, sir.

Mr. BRITT. That is distinctly a public matter, and I have written to Lewis in response to complaints, and I have earnestly exhorted him to give me the facts and particulars of any delinquency on the part of the postmaster in relation to second-class matter, over which I have jurisdiction, and that I would give it attention as early as I could.

Mr. MADDEN. I think that is entirely true, and probably you did say that, but the state of affairs is such down there, and it is in such a chaos, so that they can not take the matter up. It would take more money to do the work than they can afford, and they have to let it go.

This correspondence came in from women not altogether educated, and they write on a dozen subjects in one letter, only part of which may be complaints concerning the papers or something of that kind. I have asked if they could not get the letters to prove these complaints, and they said yes, but it would take months of work to dig them out; they would all have to be read in order to get the complaints. Now, they have just abandoned the thing as useless. They are going to be destroyed if the Post Office Department can destroy them. Here is the evidence where they go out all over the country and encourage people to make complaints against the company, and they recommend Claud D. Hall as attorney to institute complaints against the company. You have had a speech delivered on the Senate floor to the effect that that man is a good man to send complaints to to proceed against the company. How can an institution live under such circumstances? It is absurd.

Mr. BRITT. I do not wish to interrupt Mr. Madden, but I only want to say that if those complaints could be made to me I would endeavor to do all I could to see that the abuses were corrected.

Mr. MADDEN. I have not any doubt about that. There comes a time when a man is down and out, and you say, "Come and complain to me and I will look into those complaints." He says, "I have complained until I am sick and tired of it, and am down and out." He has asked all along to find out wherein he was at fault, and nobody has ever told him or would tell him, except that I think you told him about these gift subscriptions. I will admit that.

Here is another affidavit which I wish to submit, by the same person, Mrs. M. E. Litten.

(The affidavit referred to is as follows:)

EXHIBIT No. 54.

STATE OF OKLAHOMA, *County of Pittsburg, ss:*

Mrs. M. E. Litten, of legal age, being duly sworn on her oath deposes as follows:

I reside in the town of North McAlester, State of Oklahoma; on or about November 1, A. D. 1906, I subscribed to and paid for one year's subscription to the Woman's National Daily, a daily newspaper published by The Lewis Publishing Co., of St. Louis, Mo.; subsequent to said date of subscription I did not receive said daily paper, subscribed for as aforesaid, regularly during a period of several months, and during said period of several months subsequent to date of said subscription the delivery of said Woman's National Daily to me was irregular, in that I did not receive it at intervals of days or more during the said time referred to. I have seen copies of the said newspaper dated subsequent to November 1, 1906, in the hands of certain persons in North McAlester, and state on my own personal knowledge that said copies last referred to had not been delivered in regular course through the United States post office of North McAlester, Okla., in proper course of mail delivery, but had been disposed of as old papers and thus obtained and come in the possession of said parties referred to. At one time, subsequent to date of November 1, 1906, I personally saw a pile or bundle, in my judgment, containing at least 150 copies of said Woman's National Daily in the possession of a certain lady, who had to my personal knowledge come into possession of said newspapers from said United States post office not in the regular course of mail delivery. Among said 150 copies I personally observed several addressed to me, as well as several addressed to other parties living in North McAlester aforesaid.

Further deponent saith not.

Mrs. M. E. LITTEN.

Subscribed and sworn to before me this 30th day of June, 1908.

[SEAL.]

M. A. DRAFER,
Notary Public within and for the County of Pittsburg,
State of Oklahoma.

My term expires August 1, 1909.

Mr. AUSTIN. Have you any evidence at all there from these people who failed to get these thousands of letters that were mailed out by the company?

Mr. MADDEN. No, sir; I told you I did not have. I said that several times.

Mr. AUSTIN. I believe you have read, so far, three affidavits making complaints about the delivery of the papers. Two of the three were from the same party.

Mr. MADDEN. They were on different matters; they were affidavits on different points.

I submit another affidavit on the subject of improper treatment in the mails. It is the affidavit of Lillie L. Wild, and is as follows:

EXHIBIT No. 55.

STATE OF MISSOURI, *County of St. Louis, ss:*

Lillie L. Wild, being of lawful age, deposes and on oath says: That she is connected with the so-called Lewis Enterprises, located at University City, St. Louis County, Mo.; that she has charge of the record department of the American Woman's League; that her duties include in great part the care of outgoing correspondence pertaining to the business of the Lewis Publishing Co.; that she knows of the sending out of many thousands of letters daily, which are correctly addressed from the latest correspondence of the parties to whom the letters are sent; that in great part these letters are never delivered to the persons addressed; that the nonreceipt of them is evidenced by complaints of

parties addressed of nonattention to their letters; that she has known of as many as 50 such complaints to be received in a single day; that these undelivered letters are never returned, although they bore the printed address of the sender; that it frequently happens that several letters must be written to the same party at the same address before that party ceases to complain of nonattention; that the facts recited greatly harass, interfere, and injure the business of the Lewis Publishing Co.

LILLIE L. WILD.

Subscribed and sworn to before me, a notary public, in and for the county of St. Louis, Mo., this 5th day of July, 1911.

[SEAL.]

D. COHEN,

Notary Public, St. Louis County, Mo.

My commission expires March 21, 1915.

Mr. McCoy. Were those all mailed at first-class rates?

Mr. MADDEN. Yes, sir.

Mr. AUSTIN. They all had return directions on them, too, to the effect that if they are not delivered in so many days they were to be returned.

Mr. McCoy. Would a 1-cent letter be returned?

Mr. MADDEN. No, sir; these are all first-class letters; that is, they paid the full letter rates.

Now, I will submit another affidavit by the same lady in which she says that a portion of them are returned from other post offices. It is as follows:

EXHIBIT No. 56.

STATE OF MISSOURI, *County of St. Louis, ss:*

Lillie L. Wild, being of lawful age, deposes and on oath says: That she is connected with the so-called Lewis enterprises located at University City, St. Louis County, Mo.; that as such she has charge of the record department of the American Woman's League; that her duties include in great part the care of outgoing correspondence pertaining to the business of the Lewis Publishing Co.; that she knows of the sending out of many thousands of letters daily which are correctly addressed from original orders and up-to-date correspondence; that in a great part these outgoing letters relate to the business of the Lewis Publishing Co.; that in great part the persons addressed do not receive their letters; that the undelivered letters are returned by various postmasters throughout the country, marked "unclaimed," "unknown," etc.; that frequently as many as 100 letters are so returned in a single day; that this occurs at the very same time the parties to whom the letters were sent are complaining from the very same addresses of nonattention to their letters or nonreceipt of letters or papers due them; that it has in many instances been necessary to send out two or three "follow-up" letters before those parties cease to complain of nonattention; that the "follow-up" letters bear the same addresses as are the ones sent out in the first instance; that the foregoing conditions greatly harass and interfere with the business of the Lewis Publishing Co.

LILLIE L. WILD.

Subscribed and sworn to before me, a notary public, in and for the county of St. Louis, Mo., on this 5th day of July, 1911.

[SEAL.]

D. COHEN,

Notary Public, St. Louis County, Mo.

My commission expires March 21, 1915.

Mr. BRITT. May I ask you if Mr. Lewis's envelopes have the return request on them?

Mr. MADDEN. All of them.

Mr. AUSTIN. Within a specified time?

Mr. MADDEN. That is proof of it. They do come back.

Mr. BRITT. Within a specified time?

Mr. MADDEN. That I could not say, offhand.

Mr. AUSTIN. Well, it is a fact that some postmasters observe that request and promptly attend to the matter, while others do not.

Mr. MADDEN. Oh, yes.

I wish to submit another affidavit. It is one by Louise S. Gibson, and is as follows:

EXHIBIT No. 57.

COUNTY OF ST. LOUIS, *State of Missouri*, ss:

Louise S. Gibson, being of lawful age, deposes and on oath says: That she is now and has been, for more than three months passed, in charge of the complaint department of the Lewis Publishing Co.; that in the course of daily business she has received an average of 15 complaints a day which state that no answers have been received or no attention has been paid to previous complaints sent in upon the same matters by the same persons; that investigation disclosed that the alleged previous complaints had not been received; that the filing system of the Lewis Publishing Co. is businesslike and accurate and would show such previous complaints if they had been received from the Post Office Department in the first instance; that the above facts evidenced that the Post Office Department did not deliver to the Lewis Publishing Co. all the mail matter sent to it by persons from various points throughout the country; that to her knowledge, such was a great hindrance to the company's business, but was only one of the forms by which the Post Office Department did hinder or obstruct the company's business, which was dependent upon the use of the mails.

LOUISE S. GIBSON.

Subscribed and sworn to before me, a notary public, in and for the county of St. Louis, State of Missouri, this 29th day of June, 1911.

[SEAL.]

JOHN W. LEWIS,
Notary Public, St. Louis County, Mo.

My commission expires November 23, 1914.

Mr. AUSTIN. That is one of the Madden affidavits.

Mr. MADDEN. That was drawn by me; yes, sir.

I understand I have permission to read letters from persons addressed to the Lewis Publishing Co. that are not in the form of affidavits.

This is a letter written in St. Louis on June 14, 1911, by a party whose signature was attached while visiting the plant. I submit this letter to go into the record.

(The letter referred to is as follows:)

EXHIBIT No. 58.

ST. LOUIS, MO., June 14, 1911.

LEWIS PUBLISHING CO.,
University City, St. Louis, Mo.:

I am a member of the American Woman's League. I reside at Nokomis, Ill. I am a subscriber to the Woman's National Daily, now weekly. I am aware of the difficulties your company is having with the postal establishment, one of which is a refusal to allow the mailing of copies of the weekly to persons whose subscriptions are given them as gifts. As an illustration of the difference in the application of the post-office rulings, I have to say that my husband, A. L. Culp, was for a considerable period a subscriber to the Free Press Gazette, of Nokomis. Before our last subscription ran out we were notified by the publisher that it must be paid in advance or the paper would be stopped, this being the rule of the Post Office Department. We did not pay again and

desired that the paper be stopped. It nevertheless comes and has been coming to us for two or three years since our subscription ran out, and in spite of our not wanting it. Still the Post Office Department does not interfere. It comes through the post office the same as the Woman's National Daily.

In soliciting subscriptions for the Woman's National Daily persons applied to inform me that it was their custom to hand their subscriptions to the postmaster for other publications, which appears to indicate that the Post Office Department through its postmasters cooperates with some publishers and against others. Neither this postmaster nor any other I ever heard of takes subscriptions for the weekly.

I have solicited subscriptions for the Woman's National Daily and sent them in to the company. Later the persons from whom I received the subscriptions complained that they did not receive the paper and that they missed it greatly, because it was the best paper they ever had. I notified headquarters, but the situation is still very unsatisfactory to all subscribers because of the irregularity and uncertainty of the receipt of the paper from the post office. On the one hand the postmaster is complaining that the people do not accept the papers, and on the other hand the people are complaining that they did not get their papers.

Very respectfully,

Mrs. A. L. CULP,
R. F. D. No. 3.

Mr. AUSTIN. Have you any evidence there that the Post Office Department knew about this paper called the Free Press?

Mr. MADDEN. No; except the general statement I have made that the whole service was worked up against this institution from one end of the land to the other.

Mr. AUSTIN. Was it not the duty of that newspaper editor to discontinue the paper when the subscriber failed to renew the subscription?

Mr. MADDEN. I do not care to answer that question.

Mr. AUSTIN. There is no way by which the local postmaster would know anything about it, nor would the department in Washington have any knowledge of it, unless somebody did notify them.

Mr. MADDEN. Mr. Chairman, as further evidence of the statement that I made that the Post Office Department throughout the country is operating, whether purposely so organized or not, against the Lewis enterprises, I have a long letter here which I would like to avoid reading, but which I would like to have go into the record. There is one part of it which I would like to read. This is a letter from a party who writes from Manhattan, Kans., to Mr. E. G. Lewis, and she incloses a copy of a sign which is posted up in the post office at that place, to this effect:

Woman's National Daily Weekly sold out. The Editor Lewis quits. A true copy as in the P. O.

I submit that as evidence.

The letter itself is from Mrs. M. L. Stewart and is as follows:

EXHIBIT No. 59.

MANHATTAN, KANS., April 25, 1911.

Mr. E. G. LEWIS.

DEAR FRIEND: I feel like saying, Hurrah for Mr. Lewis; he always finds a way out. We of Manhattan are with you heart and soul. You, and we, are bound to win. How I would love to be one of your army of workers. I feel that I must not again step aside from my chosen work; it is such a necessary work, and so few to do it. It is the Flavi work, restoring to health and saving the home—so necessary. We had such an enthusiastic, called meeting last

week; our dear Mrs. Willard was with us. There was much indignation in regard to a notice which had been put up in the post office. (I will inclose a copy.) A committee was appointed to go to the post office and request them to erase it and put up copies of your telegrams, which they declined to do. However, I went in the next morning, and the board had been cleaned. I also took copies of your telegram to one of our local papers with request they publish them. They refused. I immediately stopped my card and the paper. I will certainly do all I can to advance our interests and build up the league.

I have just received a letter from Congressman Jackson. I had reported to him the destruction of mail and the treatment accorded us in regard to our papers. Replies he has it under investigation, but as he is not from this district has no right to inquire into the personal matter.

In the fall I sent in subscriptions. I sent request for blank subscription lists. Received reply they had been sent; did not receive them. On or about the last day of March I received a peculiar package. It was two corners of the envelope with the pieces of the blanks in which had been sent me some four months before. This was in a leather case with torn scraps of the Drovers telegram; a rubber around it; on the outside the old number, and new, like this: 719 Osage, 1200 Fremont. I have sent them on to Washington, D. C. Am going to write Bristow and Reese. We shall be so proud when we get in our chapter house.

May long life and success attend you.
Yours, for justice,

Mrs. M. L. STEWART,
1200 Fremont Street,
Manhattan, Kans.

P. S.—I wish to send in subscriptions for Class B magazine. Will try and make no mistake. I have no blanks but will try and get some. M. L. S.

American Woman's.	Gone.
Mrs.	M. L. Stewart, Manhattan, Kansas.
Gone.	

Mr. AUSTIN. Was the notice put up in the post office there?

Mr. MADDEN. At the post office in Manhattan, Kans.

Mr. AUSTIN. Have you any evidence as to who put it up?

Mr. MADDEN. No, sir.

Mr. AUSTIN. You do not know whether an agent of the Lewis Publishing Co. put it up or not?

Mr. MADDEN. I think it might be so—in the form of a postmaster.

Mr. BRITT. Was the notice signed?

Mr. MADDEN. No; that is all there is to the notice.

Mr. AUSTIN. You gave us the name of the writer?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. Did you want the whole letter to go into the record?

Mr. MADDEN. Yes; I wanted the whole letter in the record, but I did not care to read it all. It is too hard to read.

I would like to submit another letter. This is short and is typewritten, and I would like to read it. It is from Mr. R. R. Joslin, and is as follows:

EXHIBIT No. 60.

824 WEST DAYTON STREET,
Madison, Wis., April 24, 1911.

Mr. E. G. LEWIS,
University City, St. Louis, Mo.

DEAR MR. LEWIS: This is the second letter of this kind that I have forwarded to you. If it will not do you any harm, I wish that you would mail it to the Post Office Department.

The people believe that you are in a commercial way what La Follette, of this State, is in a political way, "a fighter for the rights of the people."

I only hope that you will be able to win out in the fight that you are making. There should be no prohibitive restrictions on the freedom of the press and the right to fair and open trial ought to be granted to every American regardless of the offense he is charged with.

May God help you win this fight.

R. R. JOSLIN,
Jr. U. of W.

[Inclosure 1.]

[Second notice.]

UNITED STATES POST OFFICE,
Madison, Wis.

R. R. JOSLIN,
824 Dayton St., Madison, Wis.

DEAR MADAM: I am requested by the Third Assistant Postmaster General, Washington, D. C., to secure certain information, which is covered by the questions given below, in order that the department may determine the proper classification of The Woman's National Weekly, of St. Louis (formerly known as The Woman's National Daily). Kindly answer the following questions and return this sheet in the inclosed self-addressed envelope, which requires no stamp:

1. Are you a subscriber of The Woman's National Weekly? Yes.
2. In what way did you become a subscriber? I subscribed.
3. Did you pay the full subscription price? I certainly did. If not, how much did you pay? _____.
4. Is the paper sent to you free; if so, by whom? _____.
5. Did you subscribe for the paper through the American Woman's League; if so, upon what terms? _____.

An early reply to the foregoing questions will be very much appreciated.

Yours, very truly,

W. A. DEVINE, Postmaster.

[Inclosure 2.]

Post Office Department. Official business. (No. 14.) Penalty for private use to avoid payment of postage \$300. Postmaster, Madison, Wis., _____ County, _____.

Address on envelope: Mr. E. G. Lewis, University City, St. Louis, Mo. Postmark: Madison, Wis., Apr. 24, 1911, 7.23 p. m.

I have another letter, which I read from print, because it has been printed, and I ask that it be accepted in that form. The city was illegible. We could not tell that from the letter or from the postmark either. It was from some place in Iowa, dated April 19, 1911.

(After reading the letter referred to.)

Mr. AUSTIN. I do not think we ought to publish that letter in this record, as it is not signed.

Mr. MADDEN. It was published in the press. We could not read the handwriting very well.

Mr. AUSTIN. This man does not give you permission to use his name.

Mr. MADDEN. All right; I will withdraw it.

Mr. ALEXANDER. We will strike that out.

Mr. MADDEN. Very well.

Here is a letter, which, largely, is not on this subject. It is only the last paragraph of this letter that is of value. If you like, I will

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read that and omit the rest. It is written to Gen. Robert M. McWade, 1426 New York Avenue, Washington, D. C.

Mr. McCoy. Who is Gen. McWade?

Mr. Madden. He is the gentleman you have seen around here. He represents the company here.

Mr. Austin. Do you mean the large gentleman who was here?

Mr. Madden. Yes, sir; the fleshy gentleman.

Mr. Austin. Give us the place where that letter was written from.

Mr. Madden. That letter was written at Cenover, N. C., by Miss Mattie S. Miller.

The only paragraph of this which I want to go in the record is as follows:

Do you know, and does the Hon. E. G. Lewis know, that it is reported the Woman's National Daily will be "shut down"? Please inform him, if you think he has not heard it, and oblige.

A loyal leaguer.

(Miss) **MATTIE S. MILLER.**

I have another letter here. It is from 1318 East Broadway, Logansport, Ind., April 29, 1911, and she quotes a letter addressed to President Taft.

Mr. Austin. Are you bringing President Taft into this matter?

Mr. Madden. Because it is in the letter. I did not bring it in; it is just because he is mentioned here.

(The letter referred to is as follows:)

EXHIBIT No. 61.

1318 E. BROADWAY,
Logansport, Ind., April 29, 1911.

E. G. LEWIS.

DEAR SIR: I received the inclosed effusion in answer to the following to Mr. Taft.

"W. H. Taft: If you can sit in the Capitol and call out the Army and Navy of the United States to protect the interests of your friends, the Standard Oil, J. P. Morgan, the Guggenheims, and others, could you not train a few field guns on our corrupt Post Office Department, in the interest of one hundred thousand American women?"

I have written and received replies from Mr. Kerns, Sen., and Mr. Rauch, Con., to-day. I will write to Champ Clark, Jeff Davis, and Mr. Shively.

MRS ISAAC M. CRANFORD..

Mr. McCoy. Where did you say that letter is from?

Mr. Madden. Logansport, Ind.

Accompanying that letter is a copy of the letter sent out by Mr. James J. Britt, Third Assistant Postmaster General, explaining to her, in a two-page letter, why he did all these things that are complained of, and I submit it to go into the record. I have a number of these that have been sent in with similar protests, but I am only giving you an occasional one, just to get the gist of the thing. It is a form letter, and is as follows:

EXHIBIT No. 62.

POST OFFICE DEPARTMENT,
THIRD ASSISTANT POSTMASTER GENERAL,
Washington, April 22, 1911.

MRS. ISAAC N. CRAWFORD,
Logansport, Ind.:

Your communication in regard to The Woman's National Weekly, of St. Louis, Mo., has been received.

In reply you are informed that in July last, while the paper was published under the title of "The Woman's National Daily," the frequency of issue was changed, thus necessitating, under the Postal Laws and Regulations, an application for reentry of the publication as second-class matter. There being no inquiry concerning the publication under way at the time of making that application, the requirement of deposits, as provided by section 441 of the Postal Laws and Regulations, to cover postage at the third-class rate on mailings of the publication was, under the provisions of section 443 of the Postal Laws and Regulations, waived pending further consideration of the application. However, in view of the fact that the department was in receipt of complaints as to the continued sending of large numbers of copies to persons who had refused the publication, a test of the subscription list was made by sending queries to persons whose names and addresses were taken from the publishers' records of claimed subscribers. Twenty-four per cent of those replying stated that the publication was mailed to them, but they were not subscribers. As the names were selected at random from the subscription list, the test is representative of the entire list, and since the law (act of Mar. 3, 1879) requires that a publication to be admissible as second-class matter shall have a "legitimate list of subscribers," and this list must be legitimate in its entirety, The Woman's National Daily did not, so long as this 24 per cent of nonsubscribers formed a part of the claimed subscription list, conform to the statutory requirements.

The publishers' attention was, on February 24, 1911, called to this condition of the list with the view of having them take the necessary steps to place the subscription list in harmony with the requirements of the law. A few days thereafter the title was changed to "The Woman's National Weekly" and the frequency of issue to weekly, thus necessitating, under the Postal Laws and Regulations, an application for entry of the publication as second-class matter under the new title and frequency. Before making this application the publishers requested that the requirement of third-class deposits be waived. In view of the result of the test and the complaints that the publishers were sending the paper to persons who were not subscribers, the publishers were informed as is customary in similar cases, that the deposits could not be waived, but that action on the application, when received, would be expedited. Immediately upon receipt of the application, on March 27, 1911, the publishers were telegraphed that if they would eliminate the 24 per cent of nonsubscribers from their claimed "legitimate list of subscribers," copies mailed to the remainder of the claimed subscribers would be accepted at the usual second-class rates of postage and all deposits in excess of those rates refunded. They were also informed that copies mailed to the 24 per cent of nonsubscribers would be accepted at the transient second-class rate of 1 cent for each 4 ounces or fraction thereof, which is the rate charged all publishers on copies other than samples mailed to non-subscribers. Upon the publishers agreeing to the conditions stated, the postmaster was promptly instructed to accept copies mailed to the remainder of the list at the usual second-class rates and refund all deposits in excess of those rates. All of this was done within three days from the receipt of the application.

With reference to the statement of the publishers in the publication that it is difficult for them to ascertain which persons on their claimed subscription list compose the 24 per cent of nonsubscribers, it should be borne in mind that the department should not, because of the difficulties of the publishers, due to their methods of conducting their business, be expected to accept at the pound rate of postage, in violation of the law, copies addressed as to subscribers to persons who are not subscribers. The publishers have all the records regarding their publication and the list of claimed subscribers, and it is for them to place and maintain the claimed subscription list in such form as to contain only the names of subscribers. The method which should be employed by the publishers in removing from the claimed subscription list the names of those persons who are not subscribers is a matter for their own determination.

There has been no ruling in the case regarding so-called "gift" subscriptions. In this connection I may say that whether a person in whose behalf another has endeavored to subscribe may be included in the "legitimate list of subscribers" which the law requires a publication to have in order to be admissible as second-class matter, depends upon whether that person is willing to accept the publication and be regarded as a subscriber. If he disclaims being a subscriber or refuses to accept the paper, this department can not, for postal purposes, regard him as a subscriber.

I think, after a careful perusal of this letter, you will agree with me that the action taken on the application was not only prompt, but, in view of all the circumstances, the most liberal possible.

Respectfully,

JAMES J. BRITT,

Third Assistant Postmaster General.

Address on envelope: E. G. Lewis, University City, St. Louis, Missouri.
Personal.

Postmark: Logansport, Ind., Apr. 29, 1911—6-30 P.

Now, Mr. Chairman, I have another interesting letter here which I would like to put into the record. This is from Iowa Falls, Iowa, and is dated December 29, 1910.

(The letter referred to is as follows:)

EXHIBIT No. 63.

CLOVER LEAF TRUCK FARM,
Iowa Falls, Iowa, Dec. 29, 1910.

Mr. E. G. LEWIS.

DEAR SIR: I am getting onto inside facts. Yesterday I was told by a friend to watch the garbage pile. I took the hint immediately and began to make inquiry as to who hauled the post-office refuse. Found it was a special friend of mine, so last night after work I made a trip down to the drayman's, and out on his barn floor, where he had dumped the refuse, I found daily after daily plainly addressed. Some of them marked refused and two of the ones marked refused are carried by the carrier who I told you in my other letter to you had made his brags that he had got some to refuse it and was going to get all he could to do the same.

Now, Mr. Lewis, if you want to pay for about one-fourth page ad. in our two local papers I will put in a notice and word it something like this: To all who receive the National Daily and who has not paid for same will confer a favor upon me by accepting same and I will stand good for all charges and sign my name and also state that I am backed by the Lewis Publishing Co. Now, of course some of these papers were for parties who are spending the winter in California. But one especially is R. O. Fowler, a banker here, who took the paper from me and paid me his money, and I asked him if he wanted a receipt. He said "No," but he wanted his paper. Well, you can see how he is getting it. Now these fellows need tending to. I have got one of the regular rural carriers in the league a full paid member and he tells me a good deal what is going on in the post office, and when I made my visit to the dump pile and found these papers there and saw how those fellows were tearing down what I have striven to build up it made me warm under the collar. Now, another paper was that of Rev. C. H. Stull. Now, he gave me a dollar for the paper last year and when subscribing for it he said it was the cleanest little paper he knew of. But that was last year, of course. Well, I sent him the paper the next year and now I find it in or on the garbage pile marked refused, and I have the evidence of one of the carriers that a certain one was going to get all to refuse the papers. Now, E. G., let me hear from you on this subject.

Yours for a square deal.

C. S. BROWN,
Iowa Falls, Ia.

Mr. AUSTIN. Did they send him the advertisements?

Mr. MADDEN. No, sir; he could not pay attention to the one-thousandth part of such letters as he receives.

Mr. AUSTIN. Well, you have no proof that those papers were not actually refused, have you?

Mr. MADDEN. Only that, sir.

Mr. AUSTIN. He says they were all marked "refused."

Mr. MADDEN. If we have to make out our case by going all over the country and interviewing each postmaster and subscriber, or each person who wrote a letter, of course we will have to submit to the tyranny of it.

Mr. AUSTIN. You are attempting to show that the Post Office Department has destroyed your business, and I think you should submit some proof.

Mr. MADDEN. If you do not think so, and if the committee does not think so, I am pretty well satisfied the general public will think so.

Mr. AUSTIN. This committee is of course to investigate this question and weigh the testimony, and you certainly do not think that proof like that would be satisfactory?

Mr. MADDEN. Well, if you come to St. Louis, we will do the best we can to put the witnesses on the stand there. We have no money; the company is down and out, as far as money is concerned. It is ruined by reason of the course of conduct which I have outlined here in the last three or four days, and such conduct would ruin any enterprise. The Standard Oil Co., with all its powers, could not stand such a campaign.

I beg to read another letter into the record. This is typewritten, and is accompanied by a copy of the letter which was written to Mr. Britt.

Mr. AUSTIN. I would like to hear one of the letters written to Mr. Britt; yes.

Mr. MADDEN. This letter is from 422 East Adams Street, Springfield, Ill.

(The letter referred to is as follows:)

EXHIBIT No. 64.

422 EAST ADAMS STREET,
Springfield, Ill., June 30, 1911.

Mrs. MOORE, *University City, Mo.*

DEAR FRIEND: I find that the Third Assistant Postmaster General, James Britt, or T. E. Burton is sending Burton's speech in pamphlet form to each of our league members here in Springfield. I am surprised, and wonder how he got a list of the names of our chapter. Have you let anyone of the "inspectors" into your records down there to get these names of members of the league under any pretext whatever? If so, I think that the greatest mistake that could have been made, for now they will send broadcast the grossest misstatements to our women and scare the weak-kneed into leaving the league altogether, or else scare them so they will work for the success of the league no more. Let me hear from you as to this matter.

Inclosed is the copy of a letter I am sending to Mr. Britt and also one to Senator Burton. I want to inclose in these letters the opinion Mr. Hungerford has published as to the "Present condition of the American Woman's League," which I asked you for on a card I sent you yesterday. Can you let me have these in a day or two? I will hold open my letter to inclose them.

Very sincerely,

MARY E. LEONARD.

Mr. Britt may deny having received this. I do not know. I have it in this form.

(The letter referred to is as follows:)

EXHIBIT No. 65.

422 EAST ADAMS STREET,
Springfield, Ill., June 30, 1911.

Mr. BRITT, *Washington, D. C.*

DEAR SIR: Will you kindly mail me one-half dozen of Senator Jeff Davis's speech delivered in the United States Senate asking a report upon the special rulings of the Post Office Department upon issuance of 400,000 copies of the National Weekly as second-class mail? I have read one of Senator Burton's

speeches in reply to Senator Davis and it is such a tissue of falsehoods I feel quite sure he was grossly misinformed upon the subject he was discussing. Before a fair-minded person makes up his mind, he will examine both sides of a subject he is to deliver his opinion upon if said opinion is intended to be instructive upon a subject he is unfamiliar with, but that speech shows a willful neglect of the principle fairness, showing that he took his material from unfair, malicious, and hostile sources. A man who is moved by such partisan impulses can not hope to influence fair-minded people. If he thinks he can scare the women or terrorize them into abandonment of a deliberate choice he will have to use a different argument altogether to be convincing either to women or men. Women have an average intelligence with men upon any subject you may consider, and to tell them that they are "hired girls, washerwomen, or imbeciles" does not appeal to their sense of justice or fairness. I have several friends who have read the pamphlet I mentioned, who expressed a wish to read Senator Davis's speech, to see if he misrepresented the subject as did Senator Burton. If you have plenty of Senator Davis's speech in pamphlet let me have a dozen. I am a business woman here in Springfield, an office of my own as an abstracter, and the women come to me for information as to what Congress is doing for them.

I wish also to mention that our post office here does not deliver to the people who have paid for their own subscriptions to the National Weekly, and the carriers seem to take special pains to let us know they do not want us to have it regularly, threatening that the paper will be stopped altogether. Are these post offices acting under orders from your office in not delivering to the subscribers who have paid their own subscriptions for their papers?

The papers they thus hold up are thrown into the waste heap and reported refused to your office. If this is the source of Senator Burton's information I do not wonder at the falsehoods masquerading as "facts" in his speech.

I hardly think it a fair test of a movement to judge of its efficiency by the report of a very small per cent, who have tried to be leading spirits, and have failed of self-aggrandizement, and for this reason have become malcontents, as against 80,000 to 90,000 women who are enthusiastic in its support and furtherance.

If the Post Office Department is administered in a way to be helpful to the people whose servant it is, it will try to aid instead of baiting and hounding so rare a genius as E. G. Lewis has proven himself to be.

It is to be hoped that wisdom and helpfulness may supplant politics and jealousy in dealing with the American Woman's League and its founder by the Post Office Department.

The league is paying well and dearly for the service they get from this department of our Government and deserves better treatment from it.

Sincerely,

MARY E. LEONARD.

Did you receive that letter, Mr. Britt?

Mr. BRITT. I do not know, sir. I receive a great many, and I also receive a great many on the other side.

Mr. MADDEN. Do you sit in judgment upon such matters as that?

Mr. BRITT. I do not understand you.

Mr. MADDEN. I mean, do you decide questions of mail classifications upon those matters or upon those letters, such as you say you receive?

Mr. BRITT. I do not quite understand you.

Mr. MADDEN. I will withdraw the question.

Mr. BRITT. If you will frame it properly I will answer it.

Mr. MADDEN. I will withdraw it entirely.

Mr. McCoy. Is there anything in the record to show what the Woman's League is?

Mr. MADDEN. No, sir. It is simply as I explained briefly yesterday. I am expecting by the mail or express—they said they would hardly trust it to the mails—a statement by the properly constituted officers of what it is and what it does, and, although it is entirely apart from this case, if you desire it for your information, I will submit it to you ~~for~~ the record.

Mr. AUSTIN. It was originated or organized by Mr. Lewis?

Mr. MADDEN. Yes, sir; but I submit that is no reason for ruining the Lewis Publishing Co.

Mr. AUSTIN. Oh, no; but I wanted to give him some information. It is at present publishing this Woman's Weekly, is it not?

Mr. MADDEN. Yes, sir. That is the remnant the department has left them, and the department is after that night and day.

Mr. AUSTIN. You have not found where Mr. Britt sent those speeches of Mr. Davis?

Mr. MADDEN. I am going to leave that to Mr. Britt.

Mr. BRITT. I will refer to the correspondence in relation to the speeches of each of the Senators when we take up the other side of the case.

Mr. MADDEN. I want to ask you some questions on that line when you are on the stand, Mr. Britt.

I am getting very close to the end, gentlemen, and I think I can finish in a very short time.

I desire to insert into the record again what has been already said, that I represent the Lewis Publishing Co., and that alone. I do not represent E. G. Lewis, except insomuch as he is a member of the Lewis Publishing Co., and was at one time, for a long period, its president. He is not now. My commission is from the board of directors, and I contend it makes no difference whether Mr. Lewis is a good man or a bad man. He is not on trial here. If he is, I ask that he be represented properly; but, remember, I do not support Mr. Lewis in any wrongdoing whatever. His acts, like those of every other citizen, are subject to review in the courts, by either a criminal or a civil process. I make no excuses for him. I am not in charge of that matter.

Mr. AUSTIN. Are you going to put him on the stand?

Mr. MADDEN. Yes, sir.

I do not know whether I emphasized as strongly as I desired to that the monthly publications which were excluded from the mails on March 4, 1907, because they did not have legitimate lists of subscribers and because they were primarily designed for advertising purposes, or for free circulation, or for circulation at a nominal rate, were of substantially the same character and were restored to the mails nine months later by the Post Office Department, the only change being in the number of subscriptions allowed. In that connection I wish to say that the practice of the department, in the usual order of things, was that if the department found fault with the publisher's subscription list it notified him and gave him a chance to correct and save his property. In this case, Lewis, as he has repeatedly said, was doing no more than all other publishers were doing. There was sharp competition among them, and he was driving his business as best he knew how to get the lead if he could. All he was asking was for the department to say to him what was wrong, but it gave him no information. I say that is the fact as to the practice of the department, as evidenced by the judgment of Mr. Justice Anderson in the case of Conant v. Paine, where the court remarked, on that same question of mailing too many sample copies, that the publisher had been given every opportunity to come within the rule and had refused.

Mr. AUSTIN. Can you tell me whether there was at any time, prior to the report of the postmaster at St. Louis, complaint against the Lewis publications, or whether there was any trouble or personal difficulty or any bad feeling between Mr. Lewis and Postmaster Wyman, of St. Louis?

Mr. MADDEN. None that I know of, sir. If there was any, I do not know it.

I should say in that connection, further, that all that was necessary at any time was for the department to tell Mr. Lewis what it objected to.

Mr. ALEXANDER. I do not think it is necessary to repeat that.

Mr. MADDEN. I wanted to emphasize that, Mr. Chairman. That is all I did it for.

Mr. ALEXANDER. I think that is in the record several times.

Mr. MADDEN. Yes. It has been stated here by Mr. Britt in such a form that I take it he is intending to present the matter in such a way as to show that my conduct as Third Assistant Postmaster General in connection with this case amounted to insubordination.

Mr. ALEXANDER. I would suggest that if any testimony is introduced on that subject, you will have an opportunity to rebut it.

Mr. MADDEN. All right, I will cut that out, sir.

I have only one more paragraph to read here. This is a personal matter. So much has been said about my possession of the records that I desire to say that at the time this case was going on there was talk, and I think it appeared in the papers a number of times, to the effect that the department records were being doctored and abstracted. I think there was a suit here or criminal action against some officer for something of that kind, and that was an additional reason. I did not previously state that, but I did not propose to leave that opportunity in my case. I do not say they would have done so, but I did not intend to leave the way open.

This is my closing statement; it is very brief: There can be no doubt that a case is made out to the effect that the Lewis Publishing Co. was required to pay postage on mail matter for which no service at all was rendered; that it was compelled to pay confiscatorial and unlawful postage rates on its magazines; that its letter mail was unlawfully held up; that hundreds of thousands of copies of its magazines were unlawfully seized and confiscated; that it was denied its lawful rights in the mails; that it was denied the protection which the law gives every user of the mails; that extraordinary, unusual, unauthorized, and unnecessary inquisitorial powers were employed to discredit the company and its magazines with the public; that indictments, fraudulent as to law and evidence, were recorded against the company's officers in order that the odium thereof might damage the public faith and credit of the company and its officers forever; that civil suits, spurious as to law and evidence, were brought against the company for back postage to the damage of its public faith and credit; that it was a case of unparalleled official persecution; and that it was all made possible by official violation of the postal laws; by official violation of the regulations for the administration of the postal establishment; by official misrepresentations of the form of the statutes; by official violation and disregard of the law's limitations upon the powers of the Post Office Department and its officers; by the employment of postal

officers upon missions unauthorized by law; and that the whole was made possible by public officials conspiring to accomplish those ends, and that the accomplishment of the purposes of the conspiracy itself was made possible only by the inclusion therein of the Postmaster General himself.

Mr. ACSTIN. Did I ask you whether you approached this company or whether they approached you on the question of your employment?

Mr. MADDEN. They approached me, sir.

Mr. TOWNER. Mr. Madden, will you be ready to resume the hearing on next Monday?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. At 10 o'clock?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. Will you have the evidence marshaled and submitted in support of this charge at that time?

Mr. MADDEN. The evidence I expect to submit in support of the various obligations is now in the record as exhibits.

Mr. TOWNER. They will be referred to so that we can take these matters up and go over them separately, or, at least, that we may know what the evidence is upon which you rely as to each charge.

Mr. MADDEN. Yes, sir.

Mr. TOWNER. Of course you understand that the matter is in such a general shape that we can not understand what evidence you rely upon to support each charge particularly.

Mr. MADDEN. I will refer to that on Monday. I would have prepared for it so as to have finished it to-day, but I did not have the time.

Mr. TOWNER. Very well.

Mr. ALEXANDER. Will Mr. Lewis be here then?

Mr. MADDEN. I proposed to ask you if you wanted me to bring him here then. I suggest that you have the Post Office Department put in its response at that time.

Mr. ALEXANDER. I think if you intend to use him at all he ought to testify before the Post Office Department proceeds with its case.

Mr. MADDEN. Well, if that is your judgment I will wire him to-night.

Mr. ALEXANDER. Is that the suggestion of the committee?

Mr. MCCOY. Yes.

Mr. TOWNER. I think so. I think the complainant ought to finish its case before the Government is required to put in its side of the case.

Mr. MADDEN. Well, you will understand that we are in the embarrassing situation where the company can hardly pay my expenses to come here, and that they can not produce the witnesses here.

Mr. TOWNER. You may consider that Mr. Lewis is subpoenaed in St. Louis, and that his mileage and attendance will be allowed.

Mr. MADDEN. May I ask you to what extent I may wire the other witnesses to come here?

Mr. ALEXANDER. As far as Mr. Lewis is concerned, if that is the situation, we can have a subpoena issued for him.

Mr. MADDEN. I will wire him immediately, and I assume he will come just as soon as he possibly can. It is a 24 hours' ride from there, and he can hardly get here in time to go on the stand on Monday.

Mr. ALEXANDER. I suppose Mr. Britt would like to have a little time in which to arrange matters before he proceeds with the side of the Government.

Mr. BRITT. Yes; I would like to know whether it is the understanding that the other side is going to put in their entire case before we commence to respond.

Mr. ALEXANDER. Of course, we might have some collateral matter of not very great importance to hear.

Mr. BRITT. I shall be before the postal commission in New York on Monday.

Mr. ALEXANDER. Will you have any witnesses here in person?

Mr. MADDEN. I am only contemplating having Mr. Lewis here, under your suggestion just now.

Mr. MCCOY. Mr. Lewis ought to know, I think, that we do not want him to come here and testify as to things he has been told, unless he has been told them in writing and can produce the writings. In other words, we would like—at least I personally would like—to have Mr. Lewis testify just as any witness in a legal procedure would testify as to facts. I do not mean by that that we would tie him down to legal procedure; but it seems to me that it is upon the facts that we are to decide this matter. However, I do not want to suggest that he do not come, but I would like to have him come prepared to help us out.

Mr. TOWNER. There are so many things that have been referred to of which Mr. Lewis must have personal knowledge that I am very sure that we could not do without his testimony.

Mr. MCCOY. I do not think we could do without his testimony, either. My point was to get him to bring everything here that he has in writing which he desires to use as evidence.

Mr. MADDEN. That is where you strike the impossible.

Mr. MCCOY. Some questions have arisen; for instance, the question about who the incorporators were.

Mr. MADDEN. You can get all that when you send your committee out there. They are on the ground and will be able to pull out any paper from his files.

Mr. MCCOY. There are some of those papers which do not amount to much in bulk, and which he can bring on. I was only indicating that in your telegram to him you ask him to bring on anything in the way of original evidence which he possesses which he can conveniently bring with him.

Mr. MADDEN. He does not know what the original evidence is.

Mr. MCCOY. He can ask a lawyer out there.

Mr. MADDEN. Well, all those matters have been shifted around now. Judge Barclay does not represent him, as he did before. The reorganization has new counsel.

Mr. MCCOY. Well, some attorney will tell him what a telegram asking him to bring any original evidence means.

Mr. ALEXANDER. You must determine, in the first place, whether you want to introduce Mr. Lewis as a witness, and if so, you have in mind the abuses that you want to prove by him, and if there are any matters of which he has knowledge in the way of documentary evidence he ought to be prepared to introduce it and identify it.

Mr. AUSTIN. I want to ask you if you ever turned over to the official stenographer the first report of Postmaster Wyman, at St. Louis, on the Lewis publications.

Mr. MADDEN. Yes, sir; and it appears from the record that it was immediately sent to the Postmaster General.

I submit further exhibits which explain themselves and which have already been referred to.

They are numbered and are:

EXHIBIT No. 66.

JULY 12, 1905.

MEMORANDUM FOR THE THIRD ASSISTANT POSTMASTER GENERAL.

Case: Woman's Magazine (C. D. No. 26575) and Woman's Farm Journal (C. D. No. 58208), published at St. Louis, Mo., by the Lewis Publishing Co.

Please have investigation made along the usual lines pursued by your bureau to determine whether the Woman's Magazine and the Woman's Farm Journal are entitled to transmission at second-class rates. It is desired that you will have this investigation completed as promptly as may be consistent with your general practice and will bring the results to my attention.

Until such investigation shall have been completed it does not appear necessary to give the postmaster at St. Louis the instruction which you suggest in memorandum of the 8th instant, as continuance of the present practice will accomplish the same result.

GEO. B. CORTELYOU,
Postmaster General.

EXHIBIT No. 67.

JULY 21, 1905.

MEMORANDUM FOR THE POSTMASTER GENERAL.

Case: Woman's Magazine (C. D. No. 26575) and Woman's Farm Journal (C. D. No. 58208), published at St. Louis, Mo., by the Lewis Publishing Co.

Gen. CORTELYOU: .

In pursuance of the direction in your memorandum of July 12 to have investigation of the foregoing cases made along the usual lines pursued by this bureau, I have assigned them to be investigated in connection with the other mail-order publications covered by your letter of July 19, to Messrs. Bromwell and Weinschenk, which outlines the policy of dealing with the class to which they belong. In the meanwhile the present status is, as you direct, left unchanged and no instructions given to the postmaster at St. Louis.

Very respectfully,

EDWIN C. MADDEN,
Third Assistant Postmaster General.

EXHIBIT No. 67.

OCTOBER 14, 1905.

Gen. CORTELYOU:

Within the last half hour I have received a special delivery letter from Mr. E. G. Lewis, publisher of the Woman's Magazine and the Woman's Farm Journal, of St. Louis. The following is a copy of the letter:

"OCTOBER 12, 1905.

"Hon. EDWIN C. MADDEN,

"Third Assistant Postmaster General,

"Washington, D. C.

"DEAR SIR: At 6 p. m. last night (Oct. 11) we received second-class entry blanks from the postmaster of St. Louis with a demand that they be completely filled out and returned by this evening (Oct. 12). Some of the questions asked

would require weeks to give accurate answers, necessitating the sorting out of over a million original subscriptions and letters separating the club subscriptions from full subscriptions.

"We have information that leads us to believe that false and perjured testimony has been given by a hired spy, gotten into our subscription rooms for that purpose, in regard to our subscriptions. I do not know the purpose of this sudden demand, but I have perfect faith that in your department no action will be permitted that savors of persecution while you are at the head of it, and I simply take the liberty of advising you of this matter so that we will get a square deal.

"Respectfully,

E. G. LEWIS."

I find from investigation that the classification division, where action of the kind complained of would originate, did not initiate this action. The postmaster must, therefore, be moving of his own volition or under the direction of some other officer.

The Lewis publications are of the mail-order type, many of which are alleged to be abuses of the second-class privilege because of being "designed primarily for advertising purposes, or for free circulation, or for circulation at nominal rates." A definite plan or policy for dealing with the abuses in this class has lately been determined upon as one of the features of the general reform of abuses of the second class of mail matter. It was the result of conferences between the publishers and the Third Assistant Postmaster General and yourself, one of the features of which was the promised publication of the circular regarding lists of subscribers, etc., which is now in your hands. The design of this circular is the enunciation of definite rules for dealing in a uniform manner with all questions of this kind.

There is nothing in the law prohibiting mail-order papers as such. Many of the recognized magazines are commonly charged to be of that type. The rules heretofore in effect have not furnished any satisfactory and effective guide capable of uniform and general application upon the question of primary design, free circulation, or circulation at nominal rates. Unless such rules and the practice upon them be general and uniform in their operation, they manifestly can not stand either the test of public criticism or judicial scrutiny.

Throughout my dealing with this class of cases, and for that matter with all others, it has been my aim to avoid the slightest appearance of persecution or precipitate action of any kind whatever by the singling out of one publisher for treatment in advance of those in his class. It is this policy which is the cornerstone of the reform; without it we could not have succeeded. As it is, there is no publisher able to sustain, with the smallest fragment of evidence, the charge that he has been unjustly treated, or treated in any different manner than all those in a similar situation. Temperate and judicial treatment must characterize this work in order to make it successful.

The action mentioned in Mr. Lewis's letter was not initiated by this office to which, by the Postal Laws and Regulations, has been assigned the duty of dealing with the classification of mail matter. In my memorandum of July 8, last, relative to the prior action, which likewise was not initiated by this office, I suggested that if you wished an investigation might be carried on here in harmony with the general practice. To this you assented in a memorandum dated July 12; and later in response to my verbal inquiry, you stated that you did not care to have the case taken up out of its natural order. In view of this, I am somewhat at a loss to know how to answer Mr. Lewis's inquiry, and shall await your instructions.

Respectfully,

EDWIN C. MADDEN,

Third Assistant Postmaster General.

EXHIBIT No. 68.

MEMORANDUM FOR THE POSTMASTER GENERAL.

NOVEMBER 23, 1905.

Gen. CORTELYOU:

I have the honor to hand you herewith a letter from the postmaster at St. Louis, dated November 11, on the cases of *The Woman's Magazine* and *The Woman's Farm Journal*, published in that city.

It appears that the postmaster has instituted—apparently on his own motion—an investigation with regard to these two publications, and on the result he ventures the opinion that both are abuses of the second-class mailing privilege.

My views with regard to the status of these publications have already been made known to you in several other memoranda. In reply you directed that the two cases should take their course in the class to which they belong; and that accords with my own view as to what is best to be done.

As a part of his procedure the postmaster has caused inquiries to be made by other postmasters to ascertain whether or not persons to whom copies of the publications have been mailed are subscribers in fact. This is the only instance of record where a postmaster has taken such action. A copy of the postmaster's form of inquiry is attached.

I do not consider it best for me to take any action on this letter from the postmaster until you have seen it and determined what, under the unusual circumstances, should be done with regard to it. Please direct me.

Respectfully,

EDWIN C. MADDEN,

Third Assistant Postmaster General.

(Indorsed :) November 23, 1905. To Postmaster General. Transmitting letter from postmaster, St. Louis, dated November 11, in re Lewis publications.

POST OFFICE, ST. LOUIS, MO.,
OFFICE OF THE POSTMASTER,
November 11, 1905.

TO THE THIRD ASSISTANT POSTMASTER GENERAL,
Washington, D. C.

SIR: I beg leave to state that the records of this office show as follows relative to the issues of the Lewis Publishing Co., of this city, viz, the Woman's Magazine and the Woman's Farm Journal:

First. That the Woman's Magazine is being mailed as second-class matter on a waiver of third-class postage (made during the incumbency and on the recommendation of my predecessor) dated August 22, 1902, and that no regular second-class permit (as usually issued) has ever been granted the publishers.

Second. That the Woman's Farm Journal was duly entered as second-class matter December 2, 1891.

The department's reason for neither granting the usual permit for second-class privilege for the Woman's Magazine, or denying same, has never been communicated to me.

If my silence in the matter is capable of being construed as a concurrence with the views of my predecessor and is being at all depended upon as a reason for the continued nonaction of the department as above referred to, I am led to say that by reason of information recently acquired, "I think it proper to express my conviction that not only the Woman's Magazine, but the Woman's Farm Journal as well, are both being mailed in abuse of the privileges to which second-class matter is entitled," and to an extent which justifies at least an immediate and searching investigation of the whole matter, if not an absolute denial of the second-class privileges to both publications.

My conviction, as above stated, is founded in part on reports to me made by my superintendent of mails, who had information that the October issue of the Woman's Farm Journal was mailed to regular subscribers in white wrappers and the sample copies in manila wrappers.

The weights of this mailing were as follows:

	Weight (pounds).	Number of copies.
White wrappers (at 5 to the pound).....	31, 271	156, 356
Manila wrappers (at 5 to the pound).....	28, 986	144, 930
Blue wrappers, expirations (at 5 to the pound).....	7, 651	38, 256
Manila, as samples (at 5 to the pound).....	60, 563	302, 815
Total.....	128, 471	642, 356

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Responses to inquiries by me made of postmasters at offices of addressees included in the second item above stated (manila, 144,930 copies) not only sufficiently verify the information given to my superintendent of mails (as mentioned), but also indicate that the copies in manila wrappers were systematically addressed to nonsubscribers, were not marked sample copies, and were apparently used to justify the mailing of the admittedly sample copies covered by fourth item in foregoing statement.

I had hoped to confirm my convictions as related to the October issue by a similar test of the November issue, but find my efforts were thwarted by the fact that the manner of wrapping (in different colored wrappers) has been changed and the entire November issue is in manila wrappers of one color.

This mailing, just completed, has been made as follows:

	Weight (pounds).	Number of copies.
For subscribers (5 weigh 18 ounces).....	65,034	333,300
For sample copies.....	60,178	308,412
Total.....	125,212	641,712

From which it will be seen that the total November issue is about the same as that for October, the assumption being warranted that the copies for regular subscribers, which in October were in white wrappers, are now in manila wrappers, and that the copies represented by October item No. 2 (28,986 pounds, 144,930 copies), then mailed as for regular subscribers, are again so mailed in November and used as part of the quantity to justify the sample copy mailing.

There is but one conclusion to be drawn from the sudden change in the wrapping of the November issue, viz, that it was an effort to prevent, or interfere with, an investigation of real conditions.

While like inquiries can and will be made by me of postmasters touching the legitimacy of the November issue, yet, because of the altered style of mailing, it will make an arrival at true conditions more difficult, but my opinion is that it presents a reason for immediate and decisive action on the part of the department to compel the publishers to submit to an investigation, rather than to allow them to further thwart one.

My belief is that a fair showing of the lost revenue on the November mailing of the Woman's Farm Journal is found in the following pro forma bill, based on the white and blue wrappers mailed in October:

	Weight. (pounds).	Cost of mailing at 1 cent per pound.
Due on copies of legitimate mailings (see October white wrappers).....	31,271	.....
Due on copies of legitimate expirations (see October blue wrappers).....	7,651	.....
Total legitimate mailings.....	38,922	.....
Due on sample copies, one for each legitimate subscriber.....	38,922	.....
Total.....	77,844	\$778.44
Due on balance of November mailing.....	125,212	.....
Less above mentioned.....	77,844	.....
Net.....	147,368	2,427.61
Total due on November mailing.....		3,206.05
Amount paid on November mailing.....		1,252.12
Leaves difference of (loss to Government).....		1,953.93

¹ At 5 copies weighing 18 ounces.

From what slight investigation I have been able to make of the mailings of the Woman's Magazine, indications are that similar conditions exist as affecting that magazine, and in my opinion a thorough investigation will show a pro rata loss to the Government on that publication.

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For the reasons above stated, and because I deem it my duty to no longer remain silent in this matter, I have made this report, and ask for instructions as to further action prior to the next mailings of these publications.

The inspectors have made various inquiries of me touching the case, from which I assume that additional facts can be obtained by inquiry made to the honorable chief inspector.

The Woman's Magazine begins its mailing on the 20th of each month, and the Woman's Farm Journal about the 1st of each month, and early instructions will be necessary to prevent further loss to the Government in connection with the mailings of the next issues.

Very respectfully,

FRANK WYMAN,
Postmaster.

EXHIBIT No. 69.

POST OFFICE, ST. LOUIS, MO.,
OFFICE OF THE POSTMASTER.
St. Louis, Mo., November —, 1905.

POSTMASTER, ———

SIR: Please ascertain from the below-named patron of your office whether he (or she) subscribed for the Woman's Magazine, published at St. Louis, Mo., and whether or not the magazine has been regularly received up to the present time, and particularly since the subscription expired. Your prompt attention is desired, and it is preferred, where practicable, that party make statement of facts in writing in blank spaces provided below.

It will not be necessary for you to state further than that this information is desired by the department. This communication should be considered strictly confidential, and special effort should be made to have the information with return of this letter reach the office with least possible delay.

Very respectfully,

FRANK WYMAN, *Postmaster.*

———
About what date (month and year) did you subscribe for the Woman's Magazine? ———.

About what date (month and year) was your last renewal paid? ———.

Have you received it regularly up to the present time? ———.

Have you received it regularly since your subscription expired? If not regularly, state how often. ———.

(Party receiving magazine sign here.)

Attest:

(Postmaster or carrier.)

EXHIBIT No. 70.

MEMORANDUM FOR THE POSTMASTER GENERAL.

NOVEMBER 24, 1905.

Gen. CORTLYOU:

I have the honor to hand you herewith a communication, dated November 18, from Mr. E. G. Lewis, publisher of the Woman's Magazine and Woman's Farm Journal, of St. Louis.

The letter is addressed to the Third Assistant Postmaster General and complains, among other things, of the action of the postal authorities in holding up three carloads of the October number of the Woman's Farm Journal.

I think this is a matter of such importance that it should be brought to your personal attention.

Respectfully submitted.

EDWIN C. MADDEN,
Third Assistant Postmaster General.

1270 EXPENDITURES IN THE POST OFFICE DEPARTMENT.

St. Louis, November 18, 1905.

Hon. EDWIN C. MADDEN,
Third Assistant Postmaster General,
Washington, D. C.

DEAR SIR: We learned from Post-Office Inspectors Stice and Reid, at an interview in the presence of the postmaster of St. Louis, Mr. Wyman, to which we were invited on November 11, that the investigation of the circulation of our publications, now being conducted, and which has been continuously conducted for the past several months, was not ordered by your department or by the Postmaster General, but was and is entirely on the responsibility of the local inspectors. We also learned at that interview for the first time and from the same source that three carloads of the October number of the Woman's Farm Journal are now being held, five weeks after being deposited by us and postage paid, in the local post office. We also learn from many sources that postmasters have been instructed by the inspectors not to deliver our publications to subscribers unless the subscribers demanded it, and in many cases the subscribers have been told that the "department was having trouble with these papers," and the delivery of the paper refused altogether. We are informed that in one post office our papers have been altogether withheld from the local subscribers for two months. No notice was given us and no excuse is offered us of the holding up of the three carloads of the Woman's Farm Journal, other than that it is at the order of Inspector Fulton.

At the interview of November 11 Postmaster Wyman, on being questioned, refused to take the responsibility for holding up the papers, but stated that he had acted under the orders of Inspector Fulton.

We beg to inquire if any new postal laws or regulations empowering the inspectors to hold up a third of the issue of a publication for five weeks, without notice or excuse of any sort to the publisher, have recently been passed, and on what authority these inspectors are acting.

Realizing that the second-class rights of our papers are in the jurisdiction of your department, and feeling sure that this wanton, destructive, and damaging act is without your knowledge, we respectfully call it to your attention for such action as you may see fit in justice to this corporation.

Respectfully,

THE LEWIS PUBLISHING Co.,
E. G. LEWIS, President.

(Whereupon, at 4.15 o'clock p. m., the committee adjourned until Monday, July 17, 1911, at 10 o'clock a. m.)

COMMITTEE ON EXPENDITURES IN THE POST OFFICE DEPARTMENT,
HOUSE OF REPRESENTATIVES,
Monday, July 17, 1911.

The committee met at 10 o'clock a. m., Hon. Joshua W. Alexander (acting chairman) presiding.

The following members of the committee were present: Messrs. Alexander (acting chairman), McCoy, Austin, and Towner.

There were also present: Mr. Edwin C. Madden, attorney in fact for the Lewis Publishing Co., and Mr. James J. Britt, Third Assistant Postmaster General.

**STATEMENT OF MR. EDWIN C. MADDEN, ATTORNEY IN FACT
FOR THE LEWIS PUBLISHING CO.—Continued.**

Mr. ALEXANDER. Have you other testimony which you desire to submit?

Mr. MADDEN. I will be able to finish this initial presentation in a very few minutes. Before leaving Saturday it was the request of the committee that I wire Mr. Lewis to come to Washington to testify

here, and I did so. I wish to read a copy of my telegram into the record:

NEW WILLARD, WASHINGTON, D. C.,
July 15, 1911.

E. G. LEWIS,
University City, St. Louis, Mo.:

Committee wants you to testify Monday if possible. Bring records of incorporation of institutions and any other original evidence you can to support your testimony. Consider this a subpoena. Committee will pay customary expenses, including mileage. Wire answer.

EDWIN C. MADDEN,
Willard Hotel.

An answer was received Sunday:

EDWIN C. MADDEN,
Care of Willard Hotel, Washington, D. C.:

Your telegram requesting me to appear before committee Monday not received until Sunday morning. Receivership proceedings against Lewis Publishing Co. instigated by postal officials come up Monday before court for hearing and Rural New Yorker suits are now in court. Am witness and absolutely necessary here. Impossible to get together books, records, and documentary evidence wanted, as United States district attorney has impounded our books and records, removing them from our building. Could leave here Monday night or Tuesday night empty handed. Am invited to address national convention of newspaper editors Tuesday at Detroit on these matters, but will send regrets and come to Washington.

E. G. LEWIS.

Mr. ALEXANDER. I notice the Republic states that the suit to which he refers is pending in St. Louis County and will soon come up; also that the books to which he refers have been impounded under an order of the district court.

Mr. MADDEN. My response will depend upon the committee's pleasure. Shall I direct Mr. Lewis to come and omit his address to the national convention?

Mr. AUSTIN. What is the date of his engagement to address the editors?

Mr. MADDEN. He says: "Am invited to address national convention of newspaper editors Tuesday at Detroit on these matters, but will send regrets and come to Washington."

Mr. AUSTIN. Let us wait until he is through with his appointment at Detroit, and then fix some date to hear him after that.

Mr. ALEXANDER. Let him come from Detroit to Washington.

Mr. MADDEN. I will so wire him during the recess at noon. He should be here by Thursday, unless there is some reason why he should be kept as a witness there. However, I will wire him to that effect.

Continuing now, evidence in support of the allegations in the bill of complaint having been submitted, I will now identify in connection with each item of complaint the particular documents already in the record which I submit in support of the respective complaints.

Should the committee send a subcommittee to St. Louis, as proposed, in connection with the bill of complaint, witnesses may be examined and oral testimony obtained as well as much written evidence in addition to that already submitted.

You have expressed a purpose to go to the bottom of this case. On behalf of the company at this point, I desire to again express the hope that the committee will deem it wise to send a subcommittee to St. Louis because there on the ground numerous witnesses may be had to

testify who will throw much additional light upon the case. Were the company able to have all these witnesses come to Washington it would gladly do so; but this is impossible owing to the crippled and depleted condition of the company, due to the action of the officials of which complaint is made.

Only the first day's proceedings were in print and available Saturday and, therefore, I was unable to complete the work of identifying the page and date of the various exhibits relied upon as evidence, and even from that printed record could not complete the evidence upon which the first allegation is based. If the committee will allow me time, and space at this point is left vacant for it, I think by to-morrow morning, with the printed matter I assume will be here to-day and available, I will complete the record so far as what has gone before is concerned. But I can now read this into the record and leave a space or, if the committee pleases, wait and put it all in.

Mr. AUSTIN. Will you need the next issue of the printed hearing in the same way that you needed to examine this first one?

Mr. MADDEN. Yes; I can not complete the first one without the additional printed matter.

Mr. McCoy. Did you have anything further to-day except the supporting proof with reference to the allegations?

Mr. MADDEN. No, nothing substantial; except I would like to submit one more paper of record.

Mr. McCoy. Then it might be well to take an adjournment and permit Mr. Madden to get these things together.

Mr. ALEXANDER. If there is no objection we will adjourn until Thursday morning at 10 o'clock, at which time we will expect Mr. Lewis to be present.

Mr. BRITT. I would like to say to the committee that I am subpoenaed or invited to appear before the Postal Commission in New York on the 31st of this month. The appointment originally was for the 18th, but at the request of the Postmaster General the hearing was continued to a later date. It is probable that I shall be there for several days, and I would like, if it suits the convenience of the committee, to present the Government's side before that time, but, of course, will meet the committee's requirements.

Mr. AUSTIN. Suppose the Lewis Publishing Co. has not completed by that time? Would you want to go ahead and break in on their case?

Mr. BRITT. No; I want to suit the convenience and judgment of the committee. I only wanted to say to the committee that if our evidence could not be presented before that time, or if it was to be presented after the 31st day of July, it might be embarrassing on account of this engagement.

Mr. ALEXANDER. I assume we will adjust the hearings to suit, not the convenience, but the necessity of the department.

(Thereupon the committee adjourned to meet Thursday, July 20, 1911, at 10 o'clock a. m.)

LEWIS PUBLISHING COMPANY

No. 15

HEARINGS

BEFORE THE

**COMMITTEE ON EXPENDITURES IN THE
POST OFFICE DEPARTMENT**

HOUSE OF REPRESENTATIVES

ON

**HOUSE RESOLUTION NO. 109
TO INVESTIGATE THE POST OFFICE
DEPARTMENT**

JULY 21, 1911



**WASHINGTON
GOVERNMENT PRINTING OFFICE
1911**

**COMMITTEE ON EXPENDITURES IN THE POST OFFICE
DEPARTMENT.**

HOUSE OF REPRESENTATIVES.

[Committee room, room 203, House Office Building. Telephone 589. Meets on call.]

WILLIAM A. ASHBROOK, Ohio, *Chairman.*

JOSHUA W. ALEXANDER, Missouri.

RICHARD W. AUSTIN, Tennessee.

WILLIAM C. REDFIELD, New York.

C. BASCOM SLEMP, Virginia.

WALTER I. MCCOY, New Jersey.

HORACE M. TOWNER, Iowa.

ERNEST CORNELL, *Clerk.*

LEWIS PUBLISHING CO.

COMMITTEE ON EXPENDITURES IN THE
POST OFFICE DEPARTMENT,
HOUSE OF REPRESENTATIVES,
Friday, July 21, 1911.

The committee met at 10 o'clock a. m., Hon. William A. Ashbrook (chairman) presiding.

The following members of the committee were present: Messrs. Alexander, McCoy, Redfield, Austin, Slemph, and Towner.

There were also present: Mr. Edwin C. Madden, attorney in fact for the Lewis Publishing Co., and Mr. James J. Britt, Third Assistant Postmaster General.

There were also present the following representatives of the White House Chapter of the American Woman's League: Mrs. Belva A. Lockwood; Mrs. M. B. Randolph; Mrs. Ellen Burroughs Foster; Mrs. Nellie Mathes Home, Boston, Mass.; Miss Lydia Armitage; Mrs. Emma L. Newton; Miss Virginia L. White; Mrs. Lucie W. Salsbury, East Falls Church, Va.; Mrs. Mary E. Payne; Mrs. Louis D. Chipman; L. D. Chipman; Mr. John R. Weathers; Miss Florence M. Hazard; Mrs. Annie Hazard Bugbee; Miss Arline Coates; Miss Luella Mitchell; and Miss Grace H. Sterrett.

MR. AUSTIN. Mr. Chairman, I wish to have a correction made in the printed hearing No. 14, on page 1240, at the bottom of the page. On that page I am credited with the reply to a question which should be credited to Mr. Madden.

THE CHAIRMAN. The correction will be made, and the stenographer will so note.

MR. AUSTIN. I will read the question and answer as it appears in the printed hearing:

MR. MCCOY. Which case does this relate to?

MR. AUSTIN. This is the Woman's National Daily case. I desire to make a further explanation here. So far as I have charged conspiracy in this case, I do not include the present Postmaster General or the present Third Assistant. It is those who were in office prior to my leaving it. I do think, however, that their conduct in this case is extraordinary. Perhaps it might be explained, but I do not think so; but from all that has gone before the committee can draw its own conclusions from the facts as they are presented.

That is Mr. Madden's statement and not my own.

THE CHAIRMAN. I will ask Judge Towner to continue his examination of Mr. Madden.

MR. MADDEN. I beg your pardon for a moment. I would like to read for the record a telegram I received from Mr. Lewis on yesterday. May I read it?

Mr. MCCOY. I do not see any necessity for putting that in the record. It could be read for the information of the committee.

The CHAIRMAN. There is no objection to your reading it. I will let the telegram be read for the record.

Mr. MADDEN. The telegram reads as follows:

ST. LOUIS, Mo., July 19, 1911.

EDWIN C. MADDEN, Washington, D. C.:

Jury in circuit court to-day at 7 p. m. handed down unanimous verdict for \$30,000 damages against Rural New Yorker for one article libeling Lewis Publishing Co. Judge Wurdeman's instructions to the jury shows clearly the legality and propriety of the American Woman's League plan of procuring subscriptions alleged to be fraudulent by Senator Burton's speech in defense of the Post Office Department. "Am leaving to-night for Washington."

E. G. LEWIS.

Mr. AUSTIN. Do you know whether an appeal was taken in that case or not?

Mr. MADDEN. I do not know, sir.

The CHAIRMAN. Judge Towner, you may proceed with the examination.

Mr. TOWNER. Mr. Madden, the first charge that you have made in the published charges, appearing on page 631 and subsequent pages of the reports of the transactions of this committee, may be fairly summarized as follows, may it not:

(a) That the Third Assistant Postmaster General was charged with all duties concerning classifications; that, nevertheless, the Postmaster General undertook directly to investigate and determine whether the Woman's Magazine and the Woman's Farm Journal were entitled to second-class privileges.

(b) That in determining that question the Postmaster General took into consideration "publication methods," which is not properly to be considered on such issues.

(c) That such inquiry was not required; was not authorized by any postal laws; that it was without proper cause; that it was without precedent; that it was in violation of the orderly manner of transacting the business of the postal establishment; and that it was not in good faith.

The question is, Does that fairly summarize your first charge?

Mr. MADDEN. I believe it does.

Mr. TOWNER. Will you now give to the committee the evidence in support of that charge?

Mr. MADDEN. In answer to that question I beg to say that I have prepared and have here a brief, to be submitted when the evidence is all in, referring to documents and telegrams in support of the charges.

Mr. TOWNER. Please put them in the record now, so we will have an opportunity to examine them.

Mr. MADDEN. The evidence on that charge is as follows:

Fulton telegram, May 31, 1905, page 811.

Postal Laws and Regulations, section 14, edition of 1902, page 784.

Postal Laws and Regulations, section 19, edition of 1902, page 784, especially paragraph 8 on page 785.

Postal Laws and Regulations, edition of 1902, section 442, not in the record.

Postal Laws and Regulations, edition of 1902, section 44, page 785.

Sections 427 and 428, Postal Laws and Regulations, edition of 1902, defining "mailable matter of the second class," not in the record.

Fulton report of May 17, 1905, pages 798-810.

Exhibit No. 10, page 855.

Circular No. 25, page 892.

Letter of Postmaster General to the Third Assistant Postmaster General, dated February 12, 1907, page 1037.

Exhibit No. 27, page 1026.

Exhibit No. 29, page 1053.

Exhibit No. 30, page 1054.

Mr. McCox. When pages are referred to, they are pages of these printed hearings?

Mr. MADDEN. Yes, sir.

Mr. AUSTIN. It is evident that we are going to be crowded here, and it will be extremely warm. I therefore suggest that we carry out the intention of the committee to hold the hearing in a larger room.

The CHAIRMAN. We will consider that suggestion later on.

Mr. TOWNER. The next charge, printed on page 631 of the record, may be fairly summarized as follows, may it not?

(a) That the official report of the post-office inspectors, dated May 17, recommended that the Woman's Magazine be denied second-class privileges, without notice or hearing, as required by the act of 1901.

(b) That this report was allowed to be printed before action was taken thereon in a public newspaper at St. Louis.

(c) That it is fairly to be assumed that this publication, with its consequent injury, was the real purpose of the inquiry, rather than for official action there.

The question is, in each one of these instances, is that a fair summary of the charges?

Mr. MADDEN. I should say so, except I do not think that it can be inferred from my language that I indicated that the entire report was printed; important extracts from the report were printed in the Post Dispatch.

Mr. TOWNER. Will you give the committee the evidence you have in support of that charge?

Mr. MADDEN. The evidence is as follows:

The Fulton report, May 17, 1905, pages 798-810.

Exhibit No. 7, page 816 (Post Dispatch article).

Fulton telegram, May 31, 1905, page 811.

Mr. TOWNER. The third charge, printed on page 632 of the record, may be fairly summarized as follows, may it not?

(a) That also the summary action recommended was not taken, the committee was cited to appear and did appear before the Third Assistant Postmaster General, who on the hearing on June 17, 1905, decided that both publications were entitled to second-class privileges.

(b) That this citation and hearing were extraordinary, unnecessary, and uncalled for, not in due course of administration, violative of orderly procedure and practice in the department, and that because of the public knowledge thereof they greatly damaged the credit, good will, and prestige of the company.

Mr. MADDEN. That is a fair summarization.

Mr. TOWNER. Will you please give the committee your testimony in support of that allegation?

Mr. MADDEN. Memorandum of Third Assistant Postmaster General to the Postmaster General, June 8, 1905, page 812; Exhibit No. 8, page 833; Exhibit No. 27, page 1026; Exhibit No. 30, page 1054; Fulton telegram, May 31, 1905, page 811; letter of the Postmaster General to the Third Assistant Postmaster General, February 12, 1907, page 1037.

Mr. TOWNER. The fourth charge, which is printed in extenso on page 632 of your allegations against the department, may be fairly summarized as follows, may it not:

(a) That, notwithstanding such finding, the Postmaster General instituted a second inquiry, on October 12, 1905.

(b) That this was without the knowledge or approval of the Third Assistant Postmaster General, and in violation of an express agreement dated July 19, 1905.

(c) That this inquiry was undertaken and conducted before the rules relating to such matters were published, December 16, 1905, under which publishers were allowed until April following to adjust irregularities.

(d) That from 20 to 50 postal officials were engaged in this inquiry; that they took possession of the company's records and files to their great injury; that when restored to the company these records and files were in great disorder.

(e) This inquiry was not in due course of administration; was not in good faith; that the expenditures therefore were unlawful; and that it greatly damaged the company.

Mr. MADDEN. I should say that is a fair summarization.

Mr. TOWNER. Will you now give the committee the evidence in support of that charge?

Mr. ALEXANDER. You say it was in violation of the agreement of July 15?

Mr. MADDEN. It was the agreement of July 19, 1905.

Mr. ALEXANDER. Should it not appear what that agreement was?

Mr. MADDEN. The agreement will appear here as a part of the testimony.

Replying to Judge Towner's question, we have this evidence: Exhibit No. 67-A, page 1265; Exhibit No. 12, page 869; Exhibit No. 68, page 1266; Fulton telegram, May 31, 1905, page 811; letter of Third Assistant Postmaster General to the Postmaster General March 17, 1906, page 897; Fulton letter to Vickery (personal) March 15, 1906, page 908; Exhibit No. 10, page 855; memorandum of Third Assistant Postmaster General to the Postmaster General July 21, 1905, page 856; memorandum of the Third Assistant Postmaster General to the Postmaster General October 14, 1905, page 858; Circular No. 25, page 892. See also photographs "A" and "B," filed with the clerk of the committee; Hannagan affidavit, page 883; Miller affidavit, page 883; Wood's affidavit, page 884; Postal Laws and Regulations, section 19, page 784 (especially paragraph 8, on page 785).

Mr. TOWNER. The fifth specification and charge, printed on pages 632 and 633 of the record, may be fairly summarized as follows, may they not?

(a) That the inspectors, the St. Louis postmaster, the Postmaster General, and other public officers, did, in October, 1905, secretly seize and confiscate 300,000 copies of the Woman's Farm Journal.

(b) That this seizure took place after the copies were deposited in the mails and the lawful postage paid thereon.

(c) That the company was not informed of such seizure.

(d) That neither the postage paid nor the copies seized were returned to the company.

(e) That the company was greatly injured thereby.

(f) That this seizure was in direct violation of law and the postal regulations; that it was unwarranted; that it was violative of orderly administration; that it was not in good faith; that it was a penal offense; that the company was helpless to prosecute because the prosecuting powers were in the hands of the offenders themselves.

Mr. MADDEN. I would like to suggest a modification of one of those statements: The company was not informed in due course; it later ascertained it.

Mr. TOWNER. With that modification, you would say that is a fair summary of the charge?

Mr. MADDEN. Yes, sir; I do.

Mr. TOWNER. Will you give the committee the evidence in support of that charge?

Mr. MADDEN. Exhibit No. 70, page 1269; act of March 3, 1885, page 910; Fulton telegram of May 31, 1905, page 811. See sections 1604-1605, 1606, 1607, and 1608, Postal Laws and Regulations.

Mr. TOWNER. The sixth charge and specification, printed on page 633, may be fairly summarized as follows, may it not?

(a) That from and after March, 1905, the Postmaster General, his assistants, and the officials under them, have on numerous occasions prevented the company from mailing its publications at publishers' second-class rates; have assessed against these publications unauthorized and prohibitive nonpublishers' rates; have extorted many thousands of dollars from the company as alleged postage, to the great injury and damage of the company.

(b) That these exactions were unwarranted; in violation of law; not in good faith; and not in due and orderly course of proper administration.

Is that a fair summary of that charge?

Mr. MADDEN. Yes, sir; I should say it was.

Mr. TOWNER. Will you now give the committee your evidence in support of that allegation?

Mr. MADDEN. The evidence is as follows: Exhibit No. 70, page 1269; Wyman letter to Third Assistant, March 15, 1906, page 896; Fulton letter to Vickery, March 15, 1906, page 908; Exhibit No. 19, page 965; Exhibit No. 18 (three documents), pages 960-961; Fulton telegram, May 31, 1905, page 811; Exhibit No. 27, page 1026; Exhibit No. 30, page 1054; Lewis letter to Senator Reed, May 8, 1911, page 727; Exhibit No. 31, page 1115; Judge Trieber on demurrer, page 917; act of 1884, page 916; act of 1885, page 910; act of 1901, page 904.

Mr. TOWNER. The seventh charge and specification, which is set out at length on pages 633 and 634 of the published charges, may be fairly summarized as follows, may they not?

(a) That is, December, 1905, the inspectors and the postmaster at St. Louis seized and detained thousands of the company's outgoing sealed letters upon which the lawful postage was prepaid.

(b) That this seizure and detention was in violation of law and the postal regulations; that it is fair to assume that its only object was to examine the contents of such letters, which was unlawful.

(c) That this resulted in great injury and damage to the company.

Is that a fair summary of that charge?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. And what is the evidence that you desire to submit in support of that allegation?

Mr. MADDEN. The evidence is as follows: Exhibit No. 35, pages 1134, 1135, 1136. See sections 1604, 1605, 1606, 1607, and 1608, Postal Laws and Regulations, 1902; see section 571, paragraph 2, Postal Laws and Regulations, 1902; Exhibit No. 20 (Document No. 2), page 979 (especially par. 2, p. 980); Fulton telegram, May 31, 1905, page 811.

Mr. TOWNER. The eighth charge and specification, set out and printed on pages 633 and 634, may be fairly summarized as follows, may they not:

(a) That in 1905, and thereafter, the Government officials have sent official communications and inquiries to the company's subscribers and advertisers, calling for various kinds of information, asking if the business relations and dealings of the person addressed with the company had been satisfactory; that some 70 different forms were so sent; that these implied a threat of trouble or chastisement, and the inference that it was improper or reprehensible to patronize the company.

(b) That these were unauthorized by law and such acts were done in bad faith and for the purpose of destroying the company's business? Is that a fair summary of that charge?

Mr. MADDEN. I should say it was, sir.

Mr. TOWNER. What is the evidence you have in support of that allegation.

Mr. MADDEN. The evidence is as follows: Exhibit No. 69, page 1269; Exhibit No. 60, page, 1255; Exhibit No. 11, page 861; Exhibit No. 13, page 874; Exhibit No. 20, page 979 (especially second from last paragraph on p. 980); Fulton telegram, May 31, 1905, page 811.

The repeated inquiries on the part of the department were unnecessary. The information, if desired, was obtainable from the original written orders from the subscribers on file in the company's office and at all times available for examination.

Mr. TOWNER. The ninth charge, which is printed on pages 633 and 634, may be fairly summarized as follows, may it not?

(a) That on March 4, 1907, without notice or hearing as required by law, all copies of the Woman's Magazine and the Woman's Farm Journal were summarily denied the second-class privileges.

That this exclusion continued until December 17, 1907, when the privilege was restored.

(b) That such action was unwarranted and in violation of law; was in some part the Postmaster General's personal penalty inflicted upon the company for having offended him in published criticisms of his previous official acts; that it was a wanton disregard of prop-

erty rights and was in violation of the constitutional guaranty of the press.

(c) That such action wrecked the company's business, public faith, and credit.

Is that a fair summary of that charge?

Mr. MADDEN. I should say it is.

Mr. TOWNER. What evidence do you desire to submit in support of that charge?

Mr. MADDEN. Exhibit No. 36, pages 1140-1141, especially last paragraph, page 1141, and first part of 1142, showing that the hearing was necessarily confined to question of excess copies; Exhibit No. 20, (Doc. No. 2), page 979, especially third paragraph, page 980; Fulton telegram, May 31, 1905, page 811; Judge Trieber on demurrer, page 917; Exhibit No. 17, page 950; Exhibit No. 25, page 1007; Exhibit No. 26, page 1019; Exhibit No. 39, page 1188; Exhibit No. 37, page 1174; Exhibit No. 44, page 1216; extract from Exhibit No. 30, page 1221.

Mr. TOWNER. I now call your attention to the tenth allegation, on page 634 of the record, which is set out in full, and ask you if that charge may be fairly summarized as follows:

(a) That March 19, 1907, the Post Office Department issued a pamphlet attempting to justify its act of March 4, 1907, which pamphlet was sent in large quantities to the patrons of the company, to the press, and to the public in general.

(b) If the act of March 4 was lawful and proper, it needed no justification; the pamphlet contained untrue and libelous statements concerning the company; it was in direct violation of law; the expenditure for printing and circulating it was unauthorized; and it greatly injured the company.

Is that a fair summary of that charge?

Mr. MADDEN. I should say so.

Mr. TOWNER. What is the testimony you offer the committee in support of that charge?

Mr. MADDEN. Exhibit No. 40, page 1190 (see act of January 12, 1895, p. 778; see act of March 3, 1905, p. 778); Fulton telegram, May 31, 1905, page 811; Judge Trieber on demurrer, page 917; Exhibit No. 25, page 1017; Exhibit No. 26, page 1019; Exhibit No. 39, page 1188; Exhibit No. 37, page 1174.

Mr. TOWNER. The allegation No. 11, set out in full on page 634, may be fairly summarized as follows, may it not:

(a) That December 1, 1905, the president, secretary, and treasurer of the Lewis Publishing Co. were indicted by a United States grand jury for conspiracy to defraud the Government; also on May 4, 1906; also on July 6, 1907.

(b) That these indictments were fraudulent; that the evidence in part on which they were obtained was manufactured and false; that the indictments were without probable cause, not in good faith, and for the purpose of intimidation; that the purpose was to railroad the officers of the company into the penitentiary on executive-made law and false testimony; that the publication of these indictments greatly injured the company.

Is that a fair summary of that charge?

Mr. MADDEN. I should say so, sir.

Mr. TOWNER. What evidence do you submit to the committee in support of that charge?

Mr. MADDEN. Exhibit No. 14, page 928 (see act of 1884, p. 916; see act of 1885, p. 910; indictments not warranted by above acts although purporting to be based upon them); Jacobs-Meyer affidavit, page 920; Exhibit No. 27, page 1026; Exhibit No. 29, page 1053; Exhibit No. 30, page 1054; Exhibit No. 31, pages 1115-1116; Fulton telegram, May 31, 1905, page 811; Exhibit No. 40, page 1190; Judge Trieber on demurrer, page 917; Exhibit No. 15, page 937; Exhibit No. 16, page 941; Exhibit No. 44, page 1216; Exhibit No. 39, page 1188; Exhibit No. 37, page 1174; Exhibit No. 25, page 1007; Exhibit No. 26, page 1019; extract from Exhibit No. 30, page 1221.

Mr. TOWNER. The charge numbered 12, and set out in full on page 635 of the report, may be fairly summarized thus, may it not?

(a) That in July and November, 1907, three civil suits against the company were brought in the name of the United States against the company for back postage at the rate of 1 cent for 4 ounces.

(b) That these suits were spurious; they were without probable cause; they were in bad faith, absurd, and never intended to be tried; and that the ulterior purpose was to intimidate and ruin the company.

Is that a fair summary of that charge?

Mr. MADDEN. Yes, sir; I should say it was.

Mr. TOWNER. What evidence do you submit in support of that charge?

Mr. MADDEN. Exhibit No. 32, page 1119; Exhibit No. 34, page 1126; Judge Trieber on demurrer, page 917; Fulton telegram, May 31, 1905, page 811; Exhibit No. 25, page 1007; Exhibit No. 26, page 1019; Exhibit No. 37, page 1174; Exhibit No. 39, page 1188; extract from Exhibit No. 30, page 1221.

Mr. TOWNER. The thirteenth charge, set out in full on page 365, may be fairly summarized as follows, may it not:

(a) That April 20, 1907, post-office inspectors sent an alleged official inquiry addressed to all or a great part of the subscribers, readers, advertisers, and patrons of the company, naively asking whether their transactions with the company were satisfactory; that these communications artfully invited complaints of dissatisfaction and furnished free return postage.

(b) That these communications were contrary to the orderly administration of the classification laws; not in good faith; done to injure and ruin the company, and that the company was conducting a lawful business, and that all public funds spent for this purpose were unauthorized.

Is that a fair summary of that charge?

Mr. MADDEN. I should say so.

Mr. TOWNER. What is the evidence you have in support of that charge?

Mr. MADDEN. Exhibit No. 13, page 874; Exhibit No. 21, page 986; Exhibit No. 22, page 996; Fulton telegram, May 31, 1905, page 811.

Mr. TOWNER. The fourteenth charge, set out in full on page 635 of the published report, may be fairly summarized as follows, may it not:

(a) That the Woman's National Daily, established in November, 1906, was during its existence subjected to substantially the same treatment as the magazine.

Is that a fair summary of the charge?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. What is the evidence in support of that charge?

Mr. MADDEN. Exhibit No. 47, page 1241; Exhibit No. 48, page 1243; Exhibit No. 63, page 1258; Exhibit No. 61, page 1256; Exhibit No. 58, page 1253; Exhibit No. 60, page 1255; Exhibit No. 64, page 1259; Exhibit No. 65, page 1259; Exhibit No. 57, page 1252; Exhibit No. 55, page 1250; Exhibit No. 56, page 1251; Exhibit No. 54, page 1250; Exhibit No. 53, page 1248; Exhibit No. 52, page 1247; Exhibit No. 51, page 1246; Exhibit No. 49, page 1244; Exhibit No. 46, page 1228; third assistant's memorandum to classification division, page 1238; Fulton telegram, May 31, 1905, page 811; Judge Treiber on demurrer, page 917; Lewis's letter to Senator Reed, May 8, 1911, page 727; Exhibit No. 21, page 986; Exhibit No. 22, page 996; Exhibit No. 23, pages 1004-1005; Third Assistant's memorandum to classification division, page 1006; Moore affidavit, page 1136; Exhibit No. 41, page 1204; Exhibit No. 66, page 1266.

Mr. TOWNER. I believe that includes all the specific charges and allegations that you have made so far to the committee?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. I understand that you have some further testimony that you will submit to the committee in support of these allegations. Have you any?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. Consisting of the evidence of Mr. Lewis and probably the oral testimony of others?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. Have you any further documentary evidence, so far as you know of now, that you desire to submit to the committee?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. Let me ask you that hereafter, in the introduction of evidence before the committee, you will kindly specify under which charge the evidence is submitted.

Mr. MADDEN. Do you mean that as to the oral testimony?

Mr. TOWNER. As to all of it.

Mr. MADDEN. Yes, sir.

Mr. TOWNER. I presume it would be perhaps difficult in the oral testimony to state as to what particular charge it referred, but, if it will be of any assistance to the committee in any way we would be glad to have you do so, if possible.

Mr. MADDEN. Yes, sir. My object in preparing this brief I have read over this morning was to wait until the testimony was all in, and then, for the convenience of the committee, I would complete it so that it would refer to all the testimony. The brief is complete now, so far as the hearing has gone.

Mr. TOWNER. Do you desire to submit at this time any further documentary evidence?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. Now, if you have any further evidence to introduce I suggest that you submit it.

Mr. MADDEN. I submit this paper, to be marked as Exhibit 71, which is a copy of a memorandum from the Post Office Department, dated December 17, 1907, announcing the readmission of the Woman's Magazine to the mails as second-class mail matter. This is a memorandum coming from the office of the Third Assistant Postmaster General. I submit that as evidence in support of the charge No. 9.

(The document referred to, marked as Exhibit No. 71, was admitted to the record, and is as follows:)

EXHIBIT No. 71.

[Memorandum.]

DECEMBER 17, 1907.

The Woman's Magazine, published by the Lewis Publishing Co., of St. Louis, Mo., is this day admitted to the mails as mailable matter of the second class.

The Woman's Magazine is successor to The Winner, which was admitted to the second class of mail matter. In 1902 the name of The Winner was changed to The Woman's Magazine, and following such change of name application was made by the Lewis Publishing Co. for the admission to the mails of The Woman's Magazine as second-class matter under section 443 of the Postal Laws and Regulations, which provides:

"In case of a change of name or of the regular periods of issue of a publication already entered as second-class matter, or the removal of its office of publication to a post office other than that of original entry, the postmaster will require the publishers to apply for reentry the same as though the publication were a new one."

Upon the filing of the application for the admission of The Woman's Magazine to the second class of mail matter the postmaster at St. Louis issued a temporary permit, which authorized the transmission of editions of the publication at second-class rates pending consideration of the application for its regular entry by the Post Office Department.

It should be stated here, however, that on April 2, 1902, before there was any change of name of The Winner, the Post Office Department had sited that publication to show cause why it should not be denied the second-class mailing privilege, but no further action had been taken in the matter.

In March, 1905, an exhaustive inquiry into the publication methods of the Lewis Publishing Co. was instituted by inspectors of the Post Office Department, which inquiry extended to April, 1906. This was followed in May, 1906, by an inquiry conducted by special agents attached to the office of the Third Assistant Postmaster General, which extended to February, 1907.

It was disclosed by these investigations that while about 1,500,000 copies of The Woman's Magazine were being mailed and about 800,000 of these were going as to subscribers, only 540,000 approximately were mailed in pursuance of actual subscriptions. The publication was represented to have a paid-in-advance subscription list to the number of 1,250,000 and a guaranteed circulation monthly of 1,500,000. Upon the basis of an actual list of subscribers numbering 540,000 the company was entitled to mail the same number of sample copies of the publication, provided they were marked "sample copies," so that the total of legitimate monthly mailings was 1,080,000 copies. No more than this number of copies could legally be mailed at the second-class rate of 1 cent a pound; but in order to obtain the benefit of that rate upon the remaining 420,000 of the guaranteed circulation of the publication, the company was illegally mailing monthly that number of copies as to regular subscribers and as "sample copies."

In explanation of the mailing of 1,500,000 copies monthly of The Woman's Magazine upon the basis of an actual subscription list of 540,000, the president of the company stated that the excess copies mailed as to subscribers were going to persons whose subscription had expired, but the publication was carrying each month the following notice:

"Discontinuances: Subscribers wishing The Woman's Magazine stopped at the expiration of their subscription need not notify us to that effect. We shall consider it their wish to have it discontinued if they do not renew promptly when notified that the time paid for has expired.

"If you find this paragraph marked, it means that your time is out and that we will stop sending the magazine if not renewed within 30 days. We don't

want to lose you, so please renew at once. If your paper comes in a blue wrapper, it is also a notice to you that your subscription has expired."

It was developed that this rule was not being followed; and that 34 per cent of the mailings of *The Woman's Magazine* as to subscribers were going to persons whose subscriptions had expired; and in *Conant v. the Postmaster General*, decided by the Supreme Court of the District of Columbia in October, 1905, it was held that where a considerable proportion of the persons listed as subscribers to a publication appeared to be those whose subscriptions had expired, such persons could not reasonably be counted as a part of the legitimate list of subscribers.

It was further disclosed that a large proportion of the subscriptions to *The Woman's Magazine* had been obtained at the club rate of 5 and 6 cents each instead of at the advertised rate of 10 cents per annum; that many subscriptions were being furnished free and others at greatly reduced rates in pursuance of advertising and clubbing arrangements; that the average amount received, according to the cash statement of the company, upon copies of the publication mailed was approximately 3½ cents per copy per annum; that the actual receipts from subscriptions to *The Woman's Magazine* for 1905 were about \$50,000, while the postage upon the 1,500,000 copies mailed monthly at the rate of 1 cent a pound amounted to more than \$36,000, leaving but \$14,000, or an average net subscription price, after payment of postage, of less than 1 cent per copy per annum for the copies mailed. In this calculation no consideration was given to the large money prizes periodically paid by the company to its subscription agents.

The president of the Lewis Publishing Co. was ascertained to have promoted through the advertising and editorial columns of the publication more than one dozen of his private enterprises, notwithstanding that by the Postal Regulations (sec. 437) it is provided that—

"Regular publications designed primarily for advertising purposes will include (a) those owned and controlled by one or several individuals or business concerns and conducted as an auxiliary and essentially for the main business or calling of those who own or control them; (b) publications devoted largely to advertising and having a nominal list of bona fide subscribers, but whose circulation is gratuitous."

In April, 1906, after having ascertained by very thorough tests and exhaustive inquiry that almost one-third the mailings of *The Woman's Magazine* was illegitimate, the postmaster at St. Louis, acting under instructions from the Post Office Department, began collecting from the Lewis Publishing Co. the transient second-class postage rate of 1 cent a copy on mailings of the publication in excess of the number which the company was entitled to mail at the rate of 1 cent a pound. The company appealed from the action so taken by the postmaster, and was accorded a hearing on April 30 and May 1, 1906, upon the question whether the postmaster should be sustained, as well as upon the question whether the publication should not be excluded from the second-class mailing privilege in respect of a citation which had previously issued to the company from the office of the Third Assistant Postmaster General. It was the conclusion of the Postmaster General that the use of the publication so largely in the exploitation of other enterprises of the president of the publishing company, the sending "free to recipients" of nearly twice the number of copies circulated to actual subscribers, the methods used to make the number of copies mailed each month correspond with the circulation guaranteed to advertisers, the general character of the matter embraced in the publication, and the reduction by the methods stated of the subscription rate actually received by the publisher to comparatively nothing, showed plainly (1) that the publication did not have a legitimate list of subscribers; (2) that it was primarily designed for advertising purposes; and (3) that it was circulated at nominal rates of subscription. It was so held on March 4, 1907, an order being issued denying the application for entry of the publication to the second class of mail matter, and sustaining the action of the postmaster at St. Louis.

At once the publishing company filed in the United States Court for the Eastern District of Missouri a bill praying that the postmaster at St. Louis be restrained from refusing to transmit through the mails as second-class matter the claimed circulation of *The Woman's Magazine*, and that the court ascertain and adjudge the number of legitimate subscriptions of said publication as of March 1, 1907, and for prior months since September, 1905, and so determine what number of copies of the publication the company was entitled to mail as second-class matter. The bill also prayed a temporary injunction re-

straining the postmaster from interfering with the mailing of the claimed circulation of the publication at the second-class rates of postage and from depriving said publication of the second-class mailing privilege alleged to have been granted to it in 1902. Upon the filing of the bill, an order was issued temporarily restraining the postmaster from interfering with the transmission of issues of the publication at the second-class postage rates upon the giving of a bond by the company guaranteeing the difference between postage paid upon mailings of the publication at the second-class rates and that which would be due upon such mailings if reckoned at the third-class rate. Upon the hearing in respect of the application for a temporary injunction the restraining order was dissolved and the temporary injunction denied. The matter has not yet come to a final hearing, but the effect of the dissolution of the temporary restraining order was to continue in force the order of the Postmaster General denying the application of the publication for the second-class mailing privilege.

Suits are now in process against the Lewis Publishing Co. aggregating over \$160,000. Of the amount thus sued for, \$129,194.85 is on account of postage held to be due upon copies of *The Woman's Magazine* and *The Woman's Farm Journal* mailed in excess of the number of copies which the company was legally entitled to mail at the second-class rate of 1 cent a pound; the legal postage rate upon such copies being the transient second-class rate of 1 cent for each 4 ounces or fraction thereof. The remainder, namely, \$30,992.28, represents the aggregate difference between the second-class and the third-class rate of postage upon mailings of the two publications named between the dates of March 7, 1907, and April 10, 1907.

With the issuance of the April (1907) number the publication of *The Woman's Magazine* was suspended and was not resumed until October. On September 24, 1907, the Lewis Publishing Co., by its president, Edward G. Lewis, filed with the Third Assistant Postmaster General, Washington, D. C., an application for admission of the publication as "mailable matter of the second class." In this application oath was made that 1,000,000 copies of each issue of the publication were printed, and 450,000 subscribers were claimed.

Upon the filing of this application investigation of the subscription files of *The Woman's Magazine* was instituted by a commission of special agents of the Post Office Department, cooperating with the postmaster at St. Louis. The report of the investigating officers was taken up and considered by the Third Assistant Postmaster General immediately upon its receipt.

The report disclosed that the publisher had included in his claimed list of subscribers 117,107 subscriptions which had expired with the March and April (1907) issues of the publication. The postmaster was thereupon informed as follows:

"In the matter of the application dated September 24, 1907, for admission of *The Woman's Magazine* as second-class matter at your office, you are informed, and will so inform the publisher, that the 450,000 claimed subscribers can not be regarded as constituting a 'legitimate list of subscribers' as required by the law (act of May 3, 1879), in that there appear to be included as subscribers the names of 117,107 persons whose subscriptions expired with the March and April, 1907, issues.

"However, I am disposed, in view of the apparent effort on the part of the publisher to so purge his list as to make the same a 'legitimate list of subscribers,' to afford him an opportunity to eliminate the aforesaid 117,107 subscriptions and to submit a sworn statement showing that he has done so, which sworn statement will be considered in connection with and as corrective of the statement of the publisher in the pending application."

On March 4, 1907, the date of the denial of the application of *The Woman's Magazine* for admission to the mails as matter of the second class, the Lewis Publishing Co. was representing that publication to have a paid-in-advance subscription list of 1,250,000. In the application of September 24, 1907, the company, under oath of its president, E. G. Lewis, claimed a subscription list of 450,000, of which 117,107 are ascertained to have expired in the months of March and April, 1907. Upon being apprised that these expired subscriptions could not be regarded as any part of a "legitimate list of subscribers," the publisher filed an amended statement showing the elimination thereof and reducing his claimed list of subscribers.

In the statement issued by the Post Office Department in March, 1907, setting forth the reasons for denying to *The Woman's Magazine* the second-class mailing privilege, it was said that the publication in question was of the

mail-order type; that its advertisements were of two classes, namely, editorial and space; that much of the regular advertising space, and of the editorial pages as well, was used as a means of promoting various private enterprises and businesses conducted in whole or in part by the president of the publishing company; that the reading matter consisted partly of short and serial stories, but largely of brief notes and miscellaneous clippings, such as are ordinarily contained in advertising circulars transmitted in the mails at the third-class rate of 1 cent for each 2 ounces or fraction thereof; that the president of the company had promoted through the columns of the publication more than one dozen of his private enterprises.

Substantially these criticisms were directed to the primary design of the publication, and the features thus objected to, taken in connection with the large number of expired subscriptions carried, the number of sample copies circulated, the reduction of the advertised subscription price by various devices, were held to establish that such design was in fact advertising.

The basis of the new application of the company is the edition of *The Woman's Magazine* for the month of October, 1907, which is found to be sufficiently free from the features which made the publication formerly objectionable to the law to warrant giving favorable consideration to the application, in so far as the character of the publication is concerned. The publishing company announces that on and after January 1, 1908, the price will be advanced to 25 cents per annum.

Upon taking the most liberal view of the claims of the company in respect of *The Woman's Magazine*, it is found that the publication possesses a list of subscribers numbering 343,341, and that in all other necessary particulars it meets the requirements of the statute prescribing the characteristics of "mailable matter of the second class." This office, therefore, authorized admission of *The Woman's Magazine* at St. Louis, Mo., as second-class matter, effective September 24, 1907.

Third Assistant Postmaster General.

Mr. TOWNER. Have you anything else to introduce now?

Mr. MADDEN. I have no further documentary evidence at this time.

Mr. TOWNER. Now, Mr. Madden, with regard to all these transactions that you had with the Postmaster General and with regard to all of these things that were established as your official acts while acting as Third Assistant Postmaster General, these are the facts of which you have personal knowledge?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. You have made statements here, and what I am trying to get at is, what is properly evidence, and what is merely a statement of the case as an attorney for the complainant.

Mr. MADDEN. Yes, sir.

Mr. TOWNER. Can you give a general statement to the committee, so we can know what parts of your statement were made from your own personal knowledge?

Mr. MADDEN. These are the exhibits that I have identified here.

Mr. TOWNER. That is an identification of the exhibits.

Mr. MADDEN. Running through the statement, I have made a great many statements of fact, and these were stated within my knowledge.

Mr. ALEXANDER. You have knowledge of the transactions at St. Louis only as they are shown here by these exhibits?

Mr. MADDEN. Yes, sir; and as I learned of them afterwards.

Mr. TOWNER. Mr. Chairman, I presume it will be impossible for us to examine Mr. Madden with regard to these matters of which he testified without first referring to this testimony, so I would like to have Mr. Madden excused for the present and have him recalled after we have gone through this testimony. That is all I think of at present.

Mr. AUSTIN. I desire to ask Mr. Madden a question. Some days ago, in answer to my question, you stated that within two and a half or three months after you severed your connection with the Post Office Department as the Third Assistant Postmaster General you secured employment from the Lewis Publishing Co. as their agent or attorney?

Mr. MADDEN. I do not think I expressed it that way. What I did say was that they asked me to accept employment. I had previously accepted employment with a firm in New York.

Mr. AUSTIN. I think the record will show that I am correct in stating that within three months after you severed your connection with the Post Office Department as the Third Assistant Postmaster General you became the representative of the Lewis Publishing Co.

Mr. MADDEN. Yes, sir; I have this to say—

Mr. AUSTIN (interposing). Did you ever read section 100 of the Revised Statutes?

Mr. MADDEN. I think I have.

Mr. AUSTIN. Well, I will read it for the benefit of the committee:

It shall not be lawful for any person appointed after the first day of June, eighteen hundred and seventy-two, as an officer, clerk, or employee in any of the departments, to act as counsel, attorney, or agent for prosecuting any claim against the United States which was pending in either of said departments while he was such officer, clerk, or employee, nor in any manner, nor by any means, to aid in the prosecution of any such claim within two years next after he shall have ceased to be such officer, clerk, or employee.

Do you not think that in appearing as the representative of this Lewis Publishing Co. within three months after you severed your connection with the Post Office Department you violated that statute?

Mr. MADDEN. I did not appear as the representative of the company.

Mr. AUSTIN. You said so in the beginning of your statement.

Mr. MADDEN. I said I was in communication with them and advising them, but I did not appear as their representative before the Government.

Mr. AUSTIN. This company has a claim against the Government?

Mr. MADDEN. But that claim was not made until last year, 1910.

Mr. AUSTIN. This company has a claim against the Government amounting to \$1,500,000, as evidenced by a special bill introduced in the House of Representatives by one of the Representatives from St. Louis, asking Congress to refer this case to the Court of Claims. Then, in the case against Mr. Goodwin and other employees of the Post Office Department, in New York, you appeared there as the representative of this company. Did you not in many ways represent this company in its cases against the Government within two years after you severed your connection with the department?

Mr. MADDEN. No, sir.

Mr. AUSTIN. When did you sever your connection with the department?

Mr. MADDEN. On March 22, 1907.

Mr. AUSTIN. Then how do you reconcile that statement with the statement you made that you accepted employment from them within two and a half or three months after severing your relations with the department?

Mr. MADDEN. That employment had nothing whatever to do with this statute.

Mr. AUSTIN. It had nothing to do with it?

Mr. MADDEN. No, sir.

Mr. AUSTIN. For what reason were you employed?

Mr. MADDEN. I was employed to advise them in connection with postal matters and the postal laws and to take up this case.

Mr. AUSTIN. And when you went into the employment of this company you carried copies of letters and records from the Post Office Department and turned them over to this company to be used in the prosecution of this claim against the Government?

Mr. MADDEN. I did not.

Mr. AUSTIN. You admitted it.

Mr. MADDEN. I said they were my personal records.

Mr. AUSTIN. You are using them now in this matter, are you not?

Mr. MADDEN. Yes, sir.

Mr. AUSTIN. Have you not used these copies of official records in aiding the Lewis Publishing Co. in the prosecution of these other cases against the Government?

Mr. MADDEN. Only in this case——

Mr. AUSTIN (interposing). You used them in New York?

Mr. MADDEN. But after the two years had expired.

Mr. AUSTIN. You used them there in one of Lewis's cases?

Mr. MADDEN. Yes, sir.

Mr. AUSTIN. And you stated to this committee, in justification of your action in having one of the Government's clerks to make you a copy of these records, that you desired them for your own protection?

Mr. MADDEN. Yes, sir.

Mr. AUSTIN. Has there ever been any necessity for the use of these records in order to protect yourself?

Mr. MADDEN. Yes, sir.

Mr. AUSTIN. And is not the only use you have made of these records to assist the Lewis Publishing Co. in prosecuting its claim against the Government?

Mr. MADDEN. No, sir.

Mr. AUSTIN. Have you not used these records in the prosecution of this claim against the Government, and have they not been used before the Committee on Claims?

Mr. MADDEN. No, sir.

Mr. AUSTIN. Are they not referred to in this publication?

Mr. MADDEN. Those that are referred to in this publication were sent up there by the department and not by me.

Mr. McCoy. Have you used these letters or other documents, of which you have copies taken from the department, in any matter not affecting your own personal rights or claims?

Mr. MADDEN. No, sir.

Mr. McCoy. Have you used them in any other matter other than these you have mentioned?

Mr. MADDEN. No, sir.

Mr. McCoy. Have you used them in matters solely affecting your own personal rights and claims?

Mr. MADDEN. Yes, sir; for instance, I wrote a book on this subject.

Mr. AUSTIN. In which you made an attack on the Postmaster General?

Mr. MADDEN. Yes, sir.

Mr. MCCOY. Have you used them in litigation of any kind in which you were personally interested?

Mr. MADDEN. Yes, sir; in connection with the libel suit in New York.

Mr. MCCOY. And in that action you got a judgment?

Mr. MADDEN. Yes, sir.

Mr. MCCOY. And in that case you used the copies of these papers you took from the department as part of your case?

Mr. MADDEN. Yes, sir.

Mr. MCCOY. And the use you intended to make of them was the use you did make of them later on?

Mr. MADDEN. Yes, sir.

Mr. ALEXANDER. At the time you had these copies made of the official correspondence that passed between yourself and Mr. Cortelyou and other officials in the department, did you contemplate any employment by the Lewis Publishing Co.?

Mr. MADDEN. I certainly did not.

Mr. ALEXANDER. Did you then expect that at any time you would need that correspondence or those documents in any way to promote the interest of this company in the prosecution of any claim it might have against the Government?

Mr. MADDEN. No, sir.

Mr. ALEXANDER. Did you have any relations with the Lewis Publishing Co. at that time, as attorney or agent, or was it understood that so soon as you severed your relations with the Post Office Department that you would enter the employment of the Lewis Publishing Co.?

Mr. MADDEN. No, sir.

Mr. ALEXANDER. I understand that it was some time after you severed your relations with the Post Office Department that you entered the employment of the Lewis Publishing Co.?

Mr. MADDEN. Yes, sir.

Mr. ALEXANDER. It was while you were Third Assistant Postmaster General, and this controversy was on between the Lewis Publishing Co. and the Post Office Department, that friction arose between yourself and Mr. Cortelyou?

Mr. MADDEN. Yes, sir.

Mr. ALEXANDER. There was a sharp difference of opinion between you as to the correct course to pursue?

Mr. MADDEN. Yes, sir.

Mr. ALEXANDER. And that difference became more acute as time passed?

Mr. MADDEN. Yes, sir.

Mr. ALEXANDER. And you anticipated that the time might come when your policy or your conduct in that matter might be challenged by him?

Mr. MADDEN. Yes, sir.

Mr. ALEXANDER. And it was to protect yourself against any possible charge of misuse of your authority as Third Assistant Postmaster General, or of your failure to discharge your duty as such, that you sought to protect yourself by preserving copies of these records?

Mr. MADDEN. Yes, sir.

Mr. ALEXANDER. I want to call your attention to this statute, and see if you violated it. It reads as follows:

It shall not be lawful for any person appointed after the first day of June, eighteen hundred and seventy-two, as an officer, clerk, or employee in any of the departments, to act as counsel, attorney, or agent for prosecuting any claim against the United States which was pending in either of the departments while he was such officer, clerk, or employee; nor in any manner, nor by any means, to aid in the prosecution of any such claim, within two years next after he shall have ceased to be such officer, clerk, or employee.

Was there any claim pending against the United States on behalf of the Lewis Publishing Co. while you were the Third Assistant Postmaster General, for damages while you were the Third Assistant Postmaster General?

Mr. MADDEN. There was not.

Mr. TOWNER. Is there a claim of that sort pending now?

Mr. ALEXANDER. When was that claim first formulated and presented to Congress?

Mr. MADDEN. In a bill June 13, 1910.

Mr. ALEXANDER. That was formulated and presented in a bill by Hon. Richard Bartholdt, Member of Congress from Missouri?

Mr. MADDEN. Yes, sir.

Mr. ALEXANDER. And referred to the Committee on Claims?

Mr. MADDEN. Yes, sir.

Mr. MCCOY. It was not a claim against the department at all?

Mr. ALEXANDER. As I understand it, there never has been and never was a claim pending against the Government on behalf of the Lewis Publishing Co.?

Mr. MADDEN. No, sir.

Mr. ALEXANDER. Nor by any manner of means within two years after he ceased to be such officer, clerk, or employee. Of course, if there was no claim pending, he could not have acted in that capacity.

Mr. TOWNER. I want to see if we understand this. There is now pending in Congress a bill on behalf of Mr. Lewis and these companies which he represents?

Mr. MADDEN. No, sir; that is a mistake.

Mr. TOWNER. For whom is the claim made?

Mr. MADDEN. The Lewis Publishing Co.

Mr. TOWNER. The Lewis Publishing Co., then, has a bill in its behalf now pending in Congress for the restitution of money that it claims had been illegally paid by it for excessive postal charges?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. And that includes all the claims for illegal postage that had been paid from the time of Mr. Lewis's connection with the company, and during the time when you were Third Assistant Postmaster General?

Mr. MADDEN. There were no claims pending then.

Mr. TOWNER. Did not Mr. Lewis present a claim for the restitution of excessive postage paid while you were the Third Assistant Postmaster General?

Mr. MADDEN. No, sir.

Mr. TOWNER. He made the claim that excessive postage had been demanded and paid by him?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. And did you not refer to the matter of reports made on the subject by the postmaster?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. And that was a subject of controversy between you and the Postmaster General?

Mr. MADDEN. It was a subject of controversy, but not a claim.

Mr. TOWNER. Do you mean that it had to be introduced as a bill in Congress for restitution in order to constitute it a claim?

Mr. MADDEN. It was a mere question of dispute about postage, which was decided by the Postmaster General.

Mr. TOWNER. Was not Lewis claiming that this money he had paid at the higher rates should be restored to him?

Mr. MADDEN. Yes, sir.

Mr. TOWNER. And that the \$7,000 that had been held up on one specific shipment—I do not remember definitely, but I think that is the amount of it—that had been paid in excess of the legal rate, should be returned to him? Was he not demanding the return of that?

Mr. MADDEN. I will say this: Mr. Lewis had appealed that matter and was heard on his appeal. He claimed that he was not mailing excess copies, but the decision was against him, on March 4, 1907, by the Postmaster General. That was not a claim.

Mr. TOWNER. You think, then, that there was no claim pending against the Government on behalf of Mr. Lewis or the Lewis Publishing Co. for any amount of postage that had been overpaid?

Mr. MADDEN. No, sir.

Mr. TOWNER. Turning to page 907 of the report, I find this statement made by Mr. Britt:

After I had gone into it pretty fully, I found that the Lewis Publishing Co. insisted upon a return of \$29,500 postage that they had been required to deposit by this St. Louis postmaster, he claiming that they were mailing copies in excess of their subscription rights, and their sample rights, equal to a certain amount each month, and required the company to deposit postage to cover that.

That was a claim pending before the department at the time you were Third Assistant Postmaster General, was it not?

Mr. MADDEN. No, sir.

Mr. TOWNER. That was not a claim?

Mr. MADDEN. The claim Mr. Britt referred to was sent in subsequently. The original request was an appeal to the Attorney General to dismiss these spurious civil suits in order that the company might make a claim upon the Postmaster General for the return of that money.

Mr. TOWNER. Is it not true, Mr. Madden, that during the whole time when these excessive amounts of postage were charged and collected by the Government, Mr. Lewis or the Lewis Publishing Co. was demanding from the Government the return of this postage, claiming that it was illegally collected?

Mr. MADDEN. They said it was unlawful to exact it, but they did not make a claim. They did not make a claim then.

Mr. TOWNER. Nor ask for its return?

Mr. MADDEN. They were appealing from the decision that assessed that postage, and the decision was against them. They appealed to the Attorney General, asking him to dismiss these spurious civil suits, in order that they might make a claim upon the Postmaster General.

Mr. TOWNER. Was not that very appeal a demand on the Government for restitution?

Mr. MADDEN. Yes, sir.

Mr. McCoy. But it was not in any department, but in court?

Mr. MADDEN. No, sir; it was not in the department.

Mr. TOWNER. There were some suits brought, were there not, on account of the Lewis Publishing Co., Mr. Madden, in the courts in some way or other for the return of this postage?

Mr. MADDEN. Yes; I believe so.

Mr. TOWNER. Do you know when those suits were brought?

Mr. MADDEN. I think right promptly after the action of March 4, 1907—shortly after.

Mr. TOWNER. That was while you were Third Assistant Postmaster General?

Mr. MADDEN. Yes; while I was Third Assistant Postmaster General.

Mr. McCoy. Admitting, for the sake of argument, that claims for this alleged overcharge of postage were pending in the department while you were Third Postmaster General, how soon after you left office, if at all, did you act as counsel, attorney, or agent for prosecuting those claims?

Mr. MADDEN. Not until 1910.

Mr. McCoy. And what interpretation would you put upon the word "prosecuting" in reference to this section of the statute?

Mr. MADDEN. Well, I should construe that of course as prosecuting in the Court of Claims or some formal matter other than a mere request that was filed. I considered the action taken, to which I referred, in 1910, as a mere filing with the Postmaster General of a request to return the money.

Mr. McCoy. Well, let us admit, for the sake of argument, that putting in a written request for the return of the money was the presentation of a claim, did you, within the statutory period, appear before any department of the Government urging favorable action on any such claim?

Mr. MADDEN. No, sir. Excuse me; I want to qualify that. Until I wrote those letters in 1910.

Mr. McCoy. I mean within the statutory period of two years—is it two years?

Mr. MADDEN. Yes.

Mr. McCoy. Within two years, within the statutory period, did you in any way appear, by person or by communication, in the Post Office Department or any other department of the Government in connection with any claims of the Lewis Publishing Co. for repayment of postage or refund or in any other manner?

Mr. MADDEN. In no manner whatever.

Mr. McCoy. Mr. Slep wants me to ask you this: Were you consulted by the Lewis Publishing Co. with reference to subsequently prosecuting any claims, either pending or to be presented within the statutory period?

Mr. MADDEN. I do not remember anything definite about that until after that correspondence in 1910, after it was decided upon.

Mr. McCoy. Now I call your attention to this Order No. 547 of the Postmaster General, dated July 16, 1907, section 7:

No person who has been an officer, clerk, or employee in this department will be recognized as counsel or attorney for prosecuting any case or matter before

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this department or any office thereof, with which he was in any wise connected while he was such officer, clerk, or employee.

Has your right to act or claim to be recognized as counsel or attorney for the Lewis Publishing Co. ever been questioned by any department of the Government or by any person in any department of the Government?

Mr. MADDEN. No, sir.

Mr. McCoy. I ask that this order be made a part of the record. Will you offer that as an exhibit, Mr. Madden?

Mr. MADDEN. I offer this as an exhibit, to be marked and filed.

(The order of the Postmaster General, Order No. 547, referred to was filed as an exhibit and marked "Exhibit No. 72.")

The exhibit referred to is as follows:

EXHIBIT No. 72.

ORDERS OF THE POSTMASTER GENERAL.

Regulations governing the admission of attorneys to practice before the Post Office Department.

Order No. 547.]

OFFICE OF THE POSTMASTER GENERAL,
Washington, D. C., July 16, 1907.

1. A list of all persons entitled to practice as attorneys before the Post Office Department will be kept in the office of the Postmaster General.

2. It shall be requisite to the admission of attorneys to practice before this department that they shall be members of the bar in the supreme court of the State, Territory, or District of Columbia to which they respectively belong, and that their private and professional character shall appear to be fair.

3. They shall respectively take and subscribe to the following oath or affirmation:

"I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely without any mental reservation or purpose of evasion; and that I will demean myself as an attorney before the Post Office Department uprightly and according to law. So help me God."

4. An applicant for admission to practice must address a letter to the Postmaster General, giving his full name and post-office address, and inclosing a certificate of the State, Territory, or district court, duly authenticated under the seal of the court, that he is an attorney in good standing; also a certificate from the judge of the State, Territorial, or district court, duly authenticated under the seal of the court, that such person is of good moral and professional character, and also the oath above required. He must state whether he has ever been suspended or disbarred from practice. He must also state whether he holds any office of trust or profit under the Government of the United States; and if he does not at the time hold such office but ever did the time of his relinquishment of said office must be given.

5. The Postmaster General may demand additional proof of qualifications and reserves the right to decline to recognize any attorney applying for practice before this department.

6. No attorney disbarred from practice in this department or any other executive department will be placed upon said list until said order of disbarment shall have been revoked. Any attorney who, subsequently to being placed on said list, is disbarred by any other executive department, will be deemed suspended from practice in this department during the pendency of said order of disbarment.

7. No person who has been an officer, clerk, or employee in this department will be recognized as counsel or attorney for prosecuting any case or matter before this department or any office thereof, with which he was in anywise connected while he was such officer, clerk, or employee.

8. No attorney who has been appointed or generally retained by or for this department will be recognized as attorney before this department or any office of for two years next after he shall have ceased to act under such appointment or retainer.

9. No person falling within either of the following prohibitions of the law will be recognized:

"Every officer of the United States, or person holding any place of trust or profit, or discharging any official function under or in connection with any executive department of the Government of the United States, or under the Senate or House of Representatives of the United States, who acts as an agent or attorney for prosecuting any claim against the United States, or in any manner or by any means, otherwise than in the discharge of his proper official duties, aids or assists in the prosecution or support of any such claim or receives any gratuity, or any share of or interest in any claim from any claimant against the United States, with intent to aid or assist, or in consideration of having aided or assisted, in the prosecution of such claim, shall pay a fine of not more than five thousand dollars, or suffer imprisonment not more than one year, or both." (Sec. 5498, R. S.)

"It shall not be lawful for any person appointed after the first day of June, eighteen hundred and seventy-two, as an officer, clerk, or employee in any of the departments, to act as counsel, attorney, or agent for prosecuting any claim against the United States, which was pending in either of said departments, while he was such officer, clerk, or employee, nor in any manner, nor by any means, to aid in the prosecution of any such claim, within two years next after he shall have ceased to be such officer, clerk, or employee." (Sec. 190, R. S.)

10. The head of any office may require an attorney to present satisfactory evidence of his authority to represent the person for whom he appears.

11. If the head of an office have reason to believe, or if complaint be made to him, that any attorney is guilty of any improper practices in connection with any matter before an office of this department, the head of such office shall investigate the matter, giving the attorney due notice, together with a statement of the charge against him, and allow him opportunity to be heard in the premises. If on the investigation it shall appear that the charge is sustained, the head of the office shall transmit all the papers in connection therewith, together with a report on the case and such recommendation as to disbarment or suspension from practice as he may deem proper, to the Postmaster General, who will within his discretion disbar or suspend such attorney.

12. Upon the disbarment of an attorney, notice thereof will be given to the heads of the offices of this department and to the other executive departments, and thereafter, until otherwise ordered, such disbarred person will not be recognized as attorney before the Post Office Department or any office thereof.

13. These regulations shall be effective on and after the 1st day of September, 1907.

G. V. L. MEYER,
Postmaster General.

Order No. 677.]

OFFICE OF THE POSTMASTER GENERAL,
Washington, D. C. September 7, 1907.

Ordered. That nothing contained in paragraphs 2, 3, 4, or 5 of Order No. 547 of July 16, 1907, establishing regulations governing the admission of attorneys to practice before the Post Office Department, shall be so construed as to deny to persons recognized prior to September 1, 1907, as agents or attorneys in fact for the transaction of business before the Post Office Department, and who on said date were in good standing, the privilege of continuing to act in such capacity and for such purpose.

G. V. L. MEYER,
Postmaster General.

MR. AUSTIN. I am looking for Mr. Madden's answer to my question, in which I think he admits it was within three months after his leaving the Post Office Department that he accepted employment with this Lewis Publishing Co. I will pass it over now, with the understanding that I will have an opportunity to ask Mr. Madden a few more questions.

MR. MADDEN. All the questions you want, sir.

THE CHAIRMAN. I would like to inquire of you, Mr. Madden, if it is not reasonable to assume that while you were acting as Third Assistant Postmaster General, on account of your rulings and atti-

tude in this case, favorable opinion would not be had of you by the Lewis Publishing Co.?

Mr. MADDEN. The Lewis Publishing Co. considered me at fault for all that had been done—for several weeks after I was out of office; charged me with it.

Mr. AUSTIN. Does not the record show that whenever the inspectors or postmaster at St. Louis gave them—the Lewis Publishing Co.—any trouble, they immediately wrote to you?

Mr. MADDEN. I was the officer to address. Everybody addressed me, except in this one case that was taken out of my hands—

The CHAIRMAN. Mr. Madden, I desire to further inquire whether or not any suggestion was ever made to you by Mr. Lewis or a representative of the Lewis Publishing Co. that it would be advisable or desirable for you to preserve copies of the correspondence you had with relation to this company.

Mr. MADDEN. No, sir; not at all.

The CHAIRMAN. Was it ever suggested to you by Mr. Lewis or any representative of the Lewis Publishing Co. that your services would likely be desirable by the Lewis Publishing Co. should you leave the Post Office Department?

Mr. MADDEN. No, sir.

The CHAIRMAN. Mr. Madden, following your resignation as Third Assistant Postmaster General and acceptance of a place, the capacity of which I do not know, with the Lewis Publishing Co., please tell the committee what you were doing for the Lewis Publishing Co. the first two years of your services with that company; in other words, in what capacity were you serving with the Lewis Publishing Co.?

Mr. MADDEN. I should say that Mr. Lewis made his first proposition to me either the latter part of July, 1907, or the first part of August, subsequent to my retirement from the department. It was about two or three months after that before I went to St. Louis. I continued to live in Washington. Then the only thing that I did for them was to advise them in connection with their mailings, their rights in the mails, and the things they were doing from day to day to avoid giving the department the opportunity of harassing them again on some new question. That continued until I think it was December, 1909. It was then that a number of suits had been tried by the Lewis attorneys, and they had resulted in ways that more or less embarrassed the company. Sometimes they were victories, but they did not amount to that to them. Therefore I told Mr. Lewis that I believed that he could never get justice, never get the wrong righted until he could have his case heard as a whole some place, not piecemeal on each individual question of law that might arise, and I proposed to him that a bill be filed in Congress and that the Congress be asked to send the matter to the Court of Claims, where the case might be heard as a whole and probably justice rendered. He accepted that idea; he thought it over for awhile and accepted it; and it was then I took up this matter of prosecuting the claim, and not until then, and this statute brought out here had expired. It was my perfectly lawful right and my privilege to prosecute the claim.

Mr. AUSTIN. What do you mean by saying that this statute had expired?

Mr. MADDEN. I mean to say that the limit of two years provided the statute had expired.

Mr. AUSTIN. You do not mean to say that the statute itself had expired?

Mr. MADDEN. No; I mean to say the time limit provided in the statute had expired.

The CHAIRMAN. You understand I was making inquiry as to what you were doing previous to the expiration of the two years?

Mr. MADDEN. Yes. And one other thing I did, looking forward to this time when this possibly might take place, I organized what was called his phonograph department, as a mere occupation on the side. I was not doing much of anything. I did write articles for the magazines, etc.

The CHAIRMAN. And it was during those two years that you wrote this red book, *The Crime of the Lewis Publishing Company*?

Mr. MADDEN. Yes. That was immediately following my retirement, about six months or eight months after.

The CHAIRMAN. May I inquire what was the object of publishing that book?

Mr. MADDEN. Yes; this was the object of publishing that book: If Mr. Cortelyou had not written to me the letter which he did write on March 4, 1907, the last moment of his administration, attempting to dump upon my shoulders all the crimes which he had committed, I would never have thought of writing that book.

Mr. McCoy. Do you mean to say crimes?

Mr. MADDEN. Yes; I mean the things that were done, the wrongs that were done. Let me change it to wrongs. But to my mind they were crimes. I probably never would have heard of Mr. Lewis, because I would have gone another way. I wanted to locate in New York, but about that time there was a damaging article published in a paper that made it undesirable for me to go there, although I had clients there—Street & Smith and Frank Tousey.

Mr. McCoy. What paper do you refer to?

Mr. MADDEN. The New York American.

The CHAIRMAN. And did you sue them for libel?

Mr. MADDEN. Yes, and I got a judgment; and Mr. Cortelyou testified against me to the best of his ability, and apparently the jury took my word.

The CHAIRMAN. Was the publishing of this book as much or more of a defense of yourself as it was a defense of the Lewis Publishing Co.?

Mr. MADDEN. It was entirely in my own defense, and not a defense of the Lewis Publishing Co. That is disclaimed all the way through. It was done for the sake of my wife and children. I published it for that reason, so that everybody, and especially they, might know that I had done the right thing while an officer of the Government, that they might have my statement, my answer to that villainous letter of his endeavoring to put it upon my shoulders and escape himself.

The CHAIRMAN. Previous to your connection with the Post Office Department, had you ever had any experience in newspaper work?

Mr. MADDEN. Some, but not very much. I was a reporter for a brief period of time on the Detroit Journal.

The CHAIRMAN. You had some knowledge of the newspaper work then that would make your services valuable to the Lewis Publishing Co. other than your knowledge of the postal laws?

Mr. MADDEN. Yes, sir.

Mr. AUSTIN. How long after you accepted employment with the Lewis Publishing Co. before you made use of these letters and records that you obtained while Assistant Postmaster General—these records of the Post Office Department.

Mr. MADDEN. I used some of those in my book.

Mr. AUSTIN. Well, how long after? When was the first time you used them?

Mr. MADDEN. In that book.

Mr. AUSTIN. When was that book issued?

Mr. MADDEN. In 1909.

Mr. AUSTIN. And you left the department when?

Mr. MADDEN. In 1907.

Mr. AUSTIN. The title of the book was The Shame of the United States Government?

Mr. MADDEN. The United States Government's Shame. Do not make a mistake in the title.

Mr. AUSTIN. The United States Government's Shame, then. Who paid for the publication and circulation of that book?

Mr. MADDEN. I paid for it. What do you mean by that question? Will you state that again?

Mr. AUSTIN. I mean the printing bill and the postage.

Mr. MADDEN. I paid the printing bill and the postage.

Mr. AUSTIN. It was not paid for by the Lewis Publishing Co.?

Mr. MADDEN. No; it was not paid for by the Lewis Publishing Co. However, to make that entirely clear I want to say that I was short of money and the Lewis Publishing Co. advanced me money to pay for the paper.

Mr. AUSTIN. Well, how much did they advance you?

Mr. MADDEN. I think there was something like \$600.

Mr. AUSTIN. They paid for the paper and you paid the printer?

Mr. MADDEN. I paid the printer.

Mr. AUSTIN. And the postage?

Mr. MADDEN. And the postage, too; yes, sir. They bought copies of me. They gave me an order for a large number of copies. I forget how many copies they bought, but the money that was given me for the paper was an advance payment on those copies.

Mr. AUSTIN. And Mr. Lewis employed you two and a half or three months after you left the Post Office Department?

Mr. MADDEN. Yes.

Mr. AUSTIN. How long after your employment did you discuss with Mr. Lewis the fact that you had procured copies of the Government records while you were Third Assistant Postmaster General?

Mr. MADDEN. I do not think he knew that until very, very recently. He had some idea, because of what was in that book; he must have known that I had some copies, but that my copies were complete as to those transactions which have been testified to I do not think he knew until very recently, if at all; he did not know that certainly until it was proposed to file a claim.

Mr. AUSTIN. And that was 1910?

Mr. MADDEN. Yes, sir; 1910. December, 1909, I should say.

Mr. AUSTIN. That was how many years after you left the department?

Mr. MADDEN. About two years and a half.

Mr. AUSTIN. About two years and a half?

Mr. MADDEN. Yes.

Mr. AUSTIN. That was the first he knew of it?

Mr. MADDEN. I would not say that was the first he knew that I had any letters or records.

Mr. AUSTIN. You testified here before that it was a year after you left the department before Mr. Lewis knew you had these records?

Mr. MADDEN. I presume it was more than that—

Mr. AUSTIN. And now you say it was two and a half years. Which statement is correct?

Mr. MADDEN. The first statement is correct. I say this: That he knew by reason of the publication of this book that I had some of the records, but he did not know that I had every connecting link, from link to link, down the line; he did not know that, and I do not think he knows that until this day.

Mr. AUSTIN. You withheld that information from your client?

Mr. MADDEN. No; he did not ask me—

Mr. AUSTIN. And you did not think it was your duty to so inform him?

Mr. MADDEN. I did not inform him, that I recall. It may be that in the course of conversation I did say something to that effect, but I do not recall. No point was made of it.

Mr. AUSTIN. Mr. Lewis knew all the time this case was pending in the department and this controversy going on between him and the Post Office Department that you were in sympathy with his side of his contention, did he not?

Mr. MADDEN. No; he did not.

Mr. McCoy. Was it a fact that you were in sympathy with it?

Mr. MADDEN. No; it was not.

Mr. AUSTIN. He did not know of your disagreement with the Postmaster General?

Mr. MADDEN. No, sir; he did not.

Mr. AUSTIN. Did not your commission at St. Louis, the commission that you named to examine the records of the Lewis Publishing Co., tell Mr. Lewis that you were not responsible for the inspectors and certain clerks that were pursuing a separate, independent investigation there, and that it was the work of the Postmaster General?

Mr. MADDEN. Not that I know of.

Mr. AUSTIN. And that it did not meet with your approval?

Mr. MADDEN. Not that I know of.

Mr. AUSTIN. Does not the record in this case show it?

Mr. MADDEN. Not that I know of.

Mr. AUSTIN. Is it not a fact that the exhibits to your deposition in this case show that?

Mr. MADDEN. Not that I know of.

Mr. McCoy. Does it not appear here that you sent a commission out to count the subscriptions that the Lewis Publishing Co. had?

Mr. MADDEN. Yes, sir.

Mr. McCoy. That subsequently the Postmaster General sent some inspectors or special agents out there?

Mr. MADDEN. Yes.

Mr. McCoy. That the special agents, so far as you knew, were not sent to count the subscriptions——

Mr. AUSTIN. Were they inspectors?

Mr. McCoy. Well, whatever they were. What were they?

Mr. MADDEN. I don't know what they were.

Mr. McCoy. Well, anyway, people not sent by you?

Mr. MADDEN. That is correct.

Mr. McCoy. That so far as you knew they had nothing to do with the count of the subscriptions?

Mr. MADDEN. No, sir.

Mr. McCoy. That Mr. Fettis simply stated that to Mr. Lewis, that he did not know what they were there for?

Mr. MADDEN. That is correct.

Mr. McCoy. And you had not sent them in any shape or manner out there—those other men?

Mr. MADDEN. No, sir.

Mr. McCoy. And that consequently the statement of Mr. Fettis that he did not know what they were there for, as long as they were not working under him, would not lead to the inference that there was any disagreement between you and the Postmaster General? Is not that so?

Mr. MADDEN. Oh, certainly.

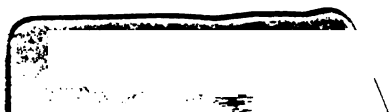
(Thereupon, at 11.50 a. m., the committee took a recess until 2 o'clock p. m.)

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